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SUMMARY TREATISE
ON THE
PRACTICE AND PROCEEDINGS
IN PARLIAMENT;
THE
PASSING OF PUBLIC AND PRIVATE BILLS;
AND THE
LAW OF ELECTIONS.

By ANTHONY HAMMOND, Esq.
Of the Inner Temple.

L O N D O N :
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CHAPTER I.

THE LAW OF ELECTIONS.

SECTION I.

Of the Writ of Summons, and Precept thereon.

MEMBERS of the House of Commons* are returned to parliament for three different kinds of places. 1. For counties at large. 2. For particular places which are, 3. or are not counties of themselves. They are likewise returned, 1. At the calling of a new parliament, 2. or to supply vacancies in one already convened. Distinctions not merely those of classification and arrangement; since in each of these different cases, different modes of election, to a certain extent, obtain. Distinctions, therefore, necessary to be premised.

The places for, and occasions on which Members are returned to Parliament, distinguished from each other.

When the Crown determines to call a new parliament, and there is none then sitting, the Chancellor is required, by warrant, to issue the usual number of writs. But when, as the course now is, the determinations to dissolve a present and convene a new parliament are concurrent acts, this warrant or order accompanies that directing him to seal the proclamation for the dissolution and convention. Under this authority, the writs are issued forthwith; and in the current form, being, like other original writs, immutable unless by statute. The interval between the teste and return of the writ, is forty days by law,¹ made fifty by practice.²

Issuing of the Writ upon the calling of a new Parliament.

On a vacancy in an existing parliament (that is, from the first day of sitting, whether actually sitting or not) the writ issues by the authority of the House itself.³

Issuing of the Writ upon a vacancy in an existing Parliament.

* The doctrines peculiar to the other constituent branches of a Parliament (the King, and House of Peers,) are too well known to justify their insertion.

¹ 7 & 8 W. 3. c. 25.

² 2 Hats.

³ 24 Geo. 3. c. 26.

On motion, if actually sitting; if not, and the vacancy has arisen (whether before or during the recess is immaterial) by death or elevation to the peerage, then in the following manner. On a written certificate of the fact from two members, the Speaker, fourteen days after notice of his intention has been inserted in the London Gazette, by his warrant directs the Clerk of the Crown to issue a new writ. A privilege, however, thus conditioned: 1. There must be time sufficient after the application, to allow the writ of election to issue before the next meeting. 2. The return of the writ under which the late member was elected, must have been brought into the Crown-office fifteen days before the end of the last sitting of the House. 3. No petition against his return must have been pending at the time of the recess.¹ And in case of the Speaker's absence, or his chair vacated, the necessary acts are to be done by those members whom he nominates, for this purpose, at the beginning of the parliament.² The House has authority to suspend the issuing of the writ, or to supersede it when issued; it has been suspended, where the place, by its misconduct, has incurred the displeasure of the House;³ and superseded (by ordering the messenger of the great seal not to deliver it, or a supersedeas to issue) when misdirected,⁴ and so likewise on a vacancy, without time to supply it, of one of the returning officers.⁵

Direction of
the Writ.

In the case of counties at large, and places that are not counties of themselves, the writs are directed to the county sheriffs; with, however, these exceptions. To the Chamberlain of Chester—Bishop of Durham—Chancellor of Lancaster—Constable of Dover Castle—and Warden of the Cinque Ports. In the case of places that are counties of themselves, the direction, with the like exceptions, is to the returning officer; who commonly, though not invariably, is the sheriff.

Mode of trans-
mitting the
Writ.

The writs, thus directed, are transmitted to the returning officers in the following manner. The messenger of the great seal, on receiving them, forthwith carries those that are directed to the sheriffs of London and Middlesex, to the officers of those sheriffs. The rest he delivers to the Postmaster General or his deputy, who dispatches them by the next post to the officers to whom

¹ 18 March, 1580-1.

² Ibid.

³ 4 Dougl.

⁴ 1 Dec. 1702: 14 Journ. 63. 88.

⁵ 14 Journ. 63. 88.

they are addressed; who give a written acknowledgment, stating the day and hour of receiving them.¹ If the officer to whom the writ is addressed, be not himself the returning officer, then in the case of the counties palatine, he transmits to the sheriff either the writ itself or his precept thereon; in all other cases, his precept.² For the making out, receipt, delivery, return, or execution of either writ or precept, no fee can be given or accepted.³

Precept thereon.

The precept should be directed to the proper returning officer.⁴ Though if an improper person is joined in the direction, his name may be rejected.⁵ So, likewise, if the direction, in its terms, is too comprehensive, it will be taken in a qualified sense.⁶ Even where the direction and delivery have been to improper persons, the returns by the proper officers (who, notwithstanding, may proceed to an election)⁷ have been adopted.⁸ And it is a rule to presume in favour of the direction.⁹

Direction of the precept.

The precept, thus directed, must be delivered to the proper returning officer. And in all other cases but the Cinque Ports, within three days from the receipt of the writ;¹⁰ in the Cinque Ports, six days are allowed. It is essential to a valid election.¹¹ So that an election previous to the receipt is void.¹² And votes given before it is read are of no force.¹³

Delivery of the precept.

The returning officer is that person to whom the instrument under which the election is immediately holden, is and ought to be directed. In counties at large, this person is the sheriff; and commonly, though not invariably, in places that are counties of themselves: as well in the excepted places, as in those which are not counties of themselves, the officer, when ascertained, depends upon charter or usage. He need not be an elector. But if an annual and corporate officer, there is a prohibition against his being chosen for two years successively.¹⁴ Where there is no known or fixed returning officer, any elector may act.¹⁵ His duty is partly ministerial, partly judicial: ministerial, where the line of duty is delineated, leaving nothing to his judgment; judicial, where the contrary.

Of the returning Officer.

¹ 53 G. 3. c. 89.

² 23 H. 6. c. 14.; 7 & 8 W. 3. c. 25.

³ l.

⁴ 7 & 8 W. 3. c. 25. s. 2.

⁵ 4 Burr. 2267.

⁶ Glanv. 37, 38.

⁷ Glanv. 37, 38.

⁸ 16 Journ. 408, 439. 19 Journ. 704, 705.

⁹ Ibid.

¹⁰ Glanv. 138.

¹¹ 7 & 8 W. 3. c. 25. s. 1.

¹² 4 Inst. 49. Glanv. 12. 20. 25.

¹³ Journ. 90. 9 Journ. 444.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ 9 Ann. c. 20. s. 8.

¹⁷ Glanv. 37, 38.

On his refusal to act, the election cannot be taken before a third person.¹

Election by another than the proper returning Officer.

If improper persons join with the proper officers in holding the election, it is nevertheless valid.² And in the case of an adverse claim or defective title, the proceedings of the person in possession of the office will be adopted.³ Unless, indeed, the rightful claimant interposes, and giving public notice of the illegality of the other's proceedings, opens a poll himself; in which case, his election will have the preference.⁴

Of vacancy in the office of the returning Officer.

In cases where the county sheriff is the returning officer, and he dies before the end of his year or lawful removal, the undersheriff supplies his place.⁵ In other cases, it seems, that if two fill the office and one has vacated it at the time of the writ issued, the other may act. As may any elector, where the office is altogether vacant.⁶ Though, on its being regularly filled up, the successor will be the proper officer.⁷ The same principles will probably apply to the case of vacancy after the writ issued. And as well to precepts as to writs.⁸

SECTION II.

Of the Time, Place, and Preparations for Election.

Time and place of Election in Counties at large.

IN elections for knights of the shire, the sheriff, within ten days after the receipt of the writ, proclaims a special court, for a Wednesday in Yorkshire, in other places for any day but Sunday, not earlier than the tenth, nor later than the sixteenth day from the proclamation.⁹ This special court is, in Glamorganshire, holden at Bridgend;¹⁰ in other counties, at the most public and usual place of election within the county, where it has been held for the last forty years.¹¹ In Hampshire, the sheriff, at the request of *one* candidate, may adjourn the court from Winchester to Newport in the Isle of Wight.¹² But

¹ 30 Journ. 456. 466. 595.

² 1 Peck. 406. 421. 432. 58 Journ. 382.

³ 1 Journ. 798. 8 Journ. 673, 674.

⁴ 13 Journ. 327. 359. 427. 24 Journ.

13. 17, 18.

⁵ 3 G. 1. c. 15. s. 8.

⁶ Glanv. 37, 38.

⁷ 1 Journ. 397. 10 Journ. 300, 301.

⁸ Vide 13 Journ. 101. 203, 204.

⁹ 25 G. 3. c. 84. s. 4.

¹⁰ 55 G. 3. c. 72.

¹¹ 7 & 8 W. 3. c. 25. s. 3.

¹² 7 & 8 W. 3. c. 25. s. 10.

in no other county can he adjourn to another place, unless all consent.¹ The time of opening the election is between 8 and 11 a. m.² And the proceedings are *de die in diem*.³

In places counties of themselves, and electing immediately under the writ itself, the sheriff forthwith gives at least three days' public notice (exclusive of the days of receiving the writ and election) of the time and place of election; and thereupon proceeds to election within eight days after the receipt of the writ. The place of election must be the most public and usual place, where it has been held for the last forty years.⁴

In places that are Counties of themselves;

In places not counties of themselves, the returning officer gives four days' notice of election, (one inclusive, the other exclusive⁵); and proceeds to election within eight days from the receipt of the precept,⁶ except in Aylesbury,⁷ Cricklade,⁸ and New Shoreham,⁹ where the election must be not later than twelve nor earlier than eight days from such receipt. The notice must be special, expressing the particular purpose of meeting. And in Aylesbury,¹⁰ Cricklade,¹¹ and New Shoreham,¹² must be fixed on the market-house or church door. In Aylesbury,¹³ the notice must be given at the towns of Great Missenden, Wendover, and Haddenham; in Cricklade,¹⁴ within the borough, and at the towns of Highworth, Malmsbury, Swindon, and Wootton Bassett; in New Shoreham,¹⁵ within the borough, and at the towns of Bramber and Steyning; in Wales,¹⁶ to the out-corporations and boroughs as well; and in other places, within the precinct. In some places, by particular custom, notice is given by ringing a bell or blowing a horn. And where there is no certain returning officer, the notoriety by communication of one burgholder to another, has been held to supersede the necessity of a more formal notice. The place of election must in Wales be at such lawful and reasonable place as the mayor shall assign;¹⁷ in other places, at the usual spot, generally the guildhall.¹⁸

And in places that are not Counties of themselves.

In all cases, the notice must be given between eight in

Notice of Election.

¹ 7 & 8 W. 3. c. 25. s. 3.

² 23 H. 6. c. 14.

³ 7 & 8 W. 3. c. 25. s. 3.

⁴ 19 G. 2. c. 28. s. 7.

⁵ 3 Lud.

⁶ 7 & 8 W. 3. c. 25.

⁷ 44 G. 3. c. 60. s. 4.

⁸ 22 G. 3. c. 31. s. 5.

⁹ 11 G. 3. c. 55. s. 5.

¹⁰ 44 G. 3. c. 60. s. 4.

¹¹ 22 G. 3. c. 31. s. 5.

¹² 11 G. 3. c. 55. s. 5.

¹³ 44 G. 3. c. 60. s. 4.

¹⁴ 22 G. 3. c. 31. s. 5.

¹⁵ 11 G. 3. c. 55. s. 5.

¹⁶ 35 H. 8. c. 11. 8 Journ. 417.

¹⁷ 35 H. 8. c. 11. s. 3.

¹⁸ 3 Lud. 27.

the forenoon and four in the afternoon, from the 25th Oct. to the 25th March inclusive; and between eight and six, from the 25th March to the 25th Oct. inclusive.¹ And may, as it seems, be given on a Sunday. In places being counties of themselves, it is reckoned, exclusive of the days both of receiving the writ and of the election;² in places not counties, one day is exclusive, the other inclusive.³ Without notice, the election is void.⁴ But the rule is to presume, that it has been duly and correctly given.⁵

Erection of
Booths in elec-
tions for Coun-
ties at large.

The returning officer need not ultimately be at any expense for the election. In certain cases, however, he must be at the trouble and first expense (to be ultimately repaid by the candidates) of erecting booths and furnishing them with proper superintendents and documents. Since, in elections for knights of the shire and several candidates, if any candidate, three days before the poll, desire it, the sheriff must erect not exceeding fifteen booths, corresponding to the number of rapes, lathes, wapentakes, wards, or hundreds in the county; and affix to each the name of the division for which it is allotted. At the same time, appointing a poll-clerk or clerks (at not exceeding a guinea a day for each clerk) in each several booth; and furnishing candidates with lists (at two shillings each) of every town, village, parish, and hamlet, wholly or in part in the division.⁶ Even where no request is made to erect booths, he must allow a check-book for every poll-book, the same as where booths have been erected.⁷

For places that
are Counties of
themselves.

In places being counties of themselves, there are no directions as to booths, except in Coventry. In that place, the returning officer must erect booths in the widest and most convenient part of the open market-place, called Cross Cheaping, not contiguous to any other building.⁸

For places that
are not Counties
of themselves.

Nor in places that are not counties are there any directions, except in Westminster. In that place, the sheriff is to provide a booth at the expense of the candidates; to make out a list of the several parishes, districts, or divisions (not exceeding eleven in the whole) into which the same is apportioned or allotted; and (upon request

¹ 33 G. 3. c. 64. s. 1.

² 19 G. 2. c. 28. s. 7.

³ 3 Lud.

⁴ Glanv. 98. 1 Peck. 431.

⁵ (94, 95.)

⁶ 18 G. 2. c. 18. s. 7.

⁷ 18 G. 2. c. 18. s. 9.

⁸ 21 G. 3. c. 54. s. 14.

and payment) to furnish the candidates with a copy of such list.¹

In all cases, upon the written request of any candidate, three days before the poll, the returning officer (ultimately at the expense of the candidates) must provide proper places for administering the oaths, and persons (at a guinea a day each) for administering them.²

Booths for administering the oaths.

A candidate becomes such by assuming the character; thus, by asking an elector to vote for him,³ or by doing any other act evincing his intention. And whether he has assumed it, is a question of fact; to be decided, therefore, by the jury in an action for the election expenses.⁴ But excepting where the Statute Law has made him liable, he is not chargeable with any expenses, unless incurred at his own request express or implied.⁵

The term Candidate defined.

One day at least before the election, the Military quartered or billeted in the place (excepting garrisons—the guards in Westminster and Southwark—those in personal attendance upon the King and Royal Family—and military, being electors) must, upon the written order of the Secretary at War, or person officiating in his place, remove to the distance of two miles or more, not to approach nearer till one day after the close of the poll. Which order, in the case of a general election, the Secretary must issue of his own accord; in that of a vacancy, only upon notice from the officer making out the writ.⁶ It seems, that calling in the military to quell a riot during the election will not avoid it, where the necessity is plain; unless, indeed, the proceedings have been thereby made irregular. Nor, with a similar qualification, will the riot itself.

Removal of the Military.

The Postmaster General and his deputy—Postmasters and their deputies—persons engaged in the Post-office revenue⁷—Commissioners and others engaged in the revenue of excise, customs,⁸ or that arising from certain other duties,⁹ are prohibited from concerning themselves in elections. By an order of the House of Commons, “it is a high infringement of the liberties and privileges of the Commons of the United Kingdom, for any Lord of Parliament, or other Peer or Prelate, not being a Peer of

Interference of certain persons at Elections prohibited.

¹ 51 G. 3. c. 126. s. 1.

² 34 G. 3. c. 73. s. 6.

³ 4 Burr. 1590.

⁴ 1 Camp. 225.

⁵ 1 Camp. 223.

⁶ 8 G. 2. c. 30. Vide 42 G. 3. c. 90. s. 173.

⁷ 9 Ann. c. 10. s. 44.

⁸ 12 & 13 W. 3. c. 10. s. 91.

⁹ 9 Ann. c. 11. s. 49.

Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament, except only any Peer of Ireland, at such elections in Great Britain respectively, where such Peer shall appear as a candidate, or by himself, or any others, be proposed to be elected; or for any Lord-lieutenant or governor of any county, to avail himself of any authority derived from his commission, to influence the election of any members to serve for the Commons in Parliament."¹ So, likewise, by a resolution of the House, "it is highly criminal in any Minister or servant under the Crown, directly or indirectly, to use the powers of office in the election of representatives to serve in parliament; and an attempt of such influence will at all times be resented by this House, as aimed at its own honour, dignity, and independence; as an infringement of the dearest rights of every subject throughout the empire, and tending to sap the basis of this free and happy Constitution."² And the right claimed by the Wardens of the Cinque Ports, to nominate and recommend to each of the Cinque Ports, the two ancient towns, and their respective members, one person to be elected for each of such places, has been declared contrary to law.³ Any interference, however, in defiance of these prohibitions, will not, it seems, avoid the election.

SECTION III.

Of the Qualifications of Electors.

Of persons that
are disabled
from voting.

THE following persons are disabled from voting—
Aliens;⁴ Idiots;⁵ Lunatics, though not declared such;⁶
women; infants under twenty-one;⁷ outlaws;⁸ convicted
felons, unless they have received their clergy or been
pardoned;⁹ persons attainted;¹⁰ those convicted of perjury
or subornation of perjury;¹¹ or of bribery;¹² a commis-

¹ 57 Journ. 5. 376. 34. (345.)

² 17 Journ. 507.

³ 2 W. & M. sess. 1. c. 7.

⁴ 1 H. C. 157.

⁵ H. C. 164, 165.

⁶ H. C. 164, 165.

⁷ 7 & 8 W. 3. c. 25. s. 8.

⁸ H. C. 219. Sim. 27.

⁹ Phill. 170. H. C. 386.

¹⁰ Sim. 55. 5 T. R. 117.

¹¹ 2 G. 2. c. 24. s. 6.

¹² 2 G. 2. c. 24. s. 8.

sioner, collector, supervisor, gauger, or other officer or person concerned or employed in the charging, collecting, levying, or managing the duties of excise, or any branch or part thereof;¹ in which list, however, the husband of the office-keeper to the collector of excise,² and an occasional collector of excise paid by the collector,³ are not comprehended; a commissioner, collector, comptroller, searcher, or other officer or person, concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof; a commissioner, officer, or other person concerned or employed in collecting, receiving, or managing any of the duties on stamped vellum, parchment, and paper; one appointed by the commissioners for distributing stamps;⁴ in which list, a subdistributor of stamps is not comprehended;⁵ a commissioner, officer, or other person employed in collecting, levying, or managing any of the duties on salt; a surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing, or receiving the duties on windows or houses; a postmaster, postmaster-general, or his or their deputy or deputies, or any person employed by, or under him or them in receiving, collecting, or managing the revenue of the post-office, or any part thereof;⁶ in which list, the husband of a postmistress,⁷ and the real postmaster, though another acts and takes the profits,⁸ are comprehended; but not a subdeputy for delivering letters in a parish not a post-town, appointed with the postmaster-general's approbation,⁹ nor the guard of a mail coach paid by the comptroller-general of the post-office;¹⁰ a captain, master, or mate of any ship, packet, or other vessel, employed by or under the postmaster or postmaster-general, in conveying the mail to and from foreign parts;¹¹ and officers appointed under the police acts.¹²

But with these exceptions, all persons qualified as presently mentioned, are enabled to vote. Therefore, denizens;¹³ quakers, and other dissenters; jews;¹⁴ papists;¹⁵

Of persons that are not disabled from voting.

¹ 22 G. 3. c. 41.

² 1 Peck. 373.

³ 4 Fra. 165.

⁴ 22 G. 3. c. 41.

⁵ 1 Fra. 164.

⁶ 22 G. 3. c. 41.

⁷ 4 Fra. 558.

⁸ 4 Fra. 561.

⁹ H. C. 203.

¹⁰ 2 Fra. 454.

¹¹ 22 G. 3. c. 41.

¹² 39 & 40 G. 3. c. 87; 42 G. 3. c. 76.

¹³ H. C. 158.

¹⁴ H. C. 218.

¹⁵ 2 Lud. 567. Clifford 401.

excommunicated persons;¹ runners of uncustomed goods;² the candidates themselves, and each for himself even;³ returning officers;⁴ commissioners of land-tax, and persons acting under their appointment in collecting or managing the land-tax,⁵ though concerned in the revenue, and paid by a per centage out of it;⁶ persons concerned in collecting or managing any other rates or duties granted by parliament; and the holders of offices and places usually granted to be held by letters-patent for any estate of inheritance or freehold.⁷ It is a question whether a popish recusant convict can vote;⁸ or one relieved by the parish;⁹ though, by express provision, relief to a militia man's family, during actual service, will not affect him.¹⁰

Qualifications of Electors for counties at large and places that are counties of themselves. A freehold estate.

Electors for the county at large, and freehold electors for places being counties of themselves, must have, 1. a freehold estate within the county or district; 2. of the annual value of forty shillings, clear of all charges, excepting taxes.¹¹

The interest must be freehold. Copyholders, therefore, cannot vote;¹² thus tenants in ancient demesne.¹³ But the following are freeholders—customary freeholders:¹⁴ a rector or vicar;¹⁵ perpetual curates deriving their salaries out of freehold lands:¹⁶ the holders in fee or for life of offices, whether concerning land or not:¹⁷ schoolmasters and parish clerks seized of land by virtue of their offices:¹⁸ but not the proprietor of a seat connected with an office, the profits of which consist of fees only.¹⁹ So the following may vote—reversioner or remainder-man of a freehold estate, who receives forty shillings rent in possession:²⁰ an equitable freeholder in possession:²¹ the husband of a woman entitled to dower, though not set out, provided the former husband died seized or possessed of the estate:²² the possessor of land for a period sufficient to bar an ejectment.²³

¹ 13 Journ. 42; Sim. 55.

² H. C. 226.

³ H. C. 206, 7.

⁴ H. C. 295; 1 Dougl. 161.

⁵ 22 G. 3. c. 41.

⁶ 2 Lud.

⁷ 22 G. 3. c. 41.

⁸ H. C. 216.

⁹ H. C. 167.

¹⁰ 18 G. 3. c. 59. s. 25.

¹¹ 18 G. 2. c. 18.

¹² 31 G. 3. c. 14.

¹³ H. C. 38.

¹⁴ H. C. 41.

¹⁵ H. C. 77.

¹⁶ H. C. 80.

¹⁷ H. C. 43, 44.

¹⁸ H. C. 80.

¹⁹ 2 Peck. 100.

²⁰ H. C. 61.

²¹ H. C. 65.

²² 20 G. 3. c. 17. s. 12. H. C. 57.

²³ H. C. 45.

The value is determined, not by what the owner makes, but by what a tenant would give.¹ And if the property is mortgaged, though the mortgagor is still in possession, yet is the interest a charge upon the estate.² In London, voters must have been upon the livery twelve calendar months before the election, must have paid their livery fines without receiving back any portion of the same, must not, within two years of the election, have been discharged from paying any rates or taxes payable by the citizens of London, nor within that period have received alms.³

Of a certain value.

In London.

In such cases, too, (elections for counties and places being counties of themselves) the voter must have been in actual possession or in receipt of the profits for upwards of twelve calendar months before the day of giving his vote. Unless the estate came to him by descent, marriage, marriage settlement, devise, or promotion to a benefice or office:⁴ and such a devolution pending the election entitles to vote.⁵ In places not being counties, no antecedent possession is required. In the case of a mortgage or trust, the person in possession votes.⁶

In possession.

And in such cases, likewise, a fraudulent grant to qualify the grantee to vote, or splitting an interest among several persons in order to multiply voices, will be of no avail.⁷ Nor will any lapse of time protect a transaction originally objectionable.⁸ Though the presumptions are that every transaction is *bonâ fide*.⁹ It is doubtful whether the splitting act extends to boroughs.¹⁰ But the doctrine of fraudulent grants, in as far as it rests upon common principles, will apply to them.

Bonâ fide.

In such cases, lastly, the property must have been assessed to the land-tax,¹¹ six months in the case of counties,¹² and twelve in that of places being counties,¹³ before the election. Unless in county elections, 1. The voter became entitled to the property in respect of which he claims to vote, by descent, marriage, marriage settlement,

And assessed to the land-tax.

¹ H. C. 86.

² H. C. 94. *sed vide* 145.

³ 11 G. 1. c. 18. s. 14.

⁴ 18 G. 2. c. 18. s. 5.; 19 G. 2. c. 28. s. 4.

⁵ 2 Peck. 115.

⁶ 7 & 8 W. 3. c. 25. s. 77.

⁷ 7 & 8 W. 3. c. 25. s. 7. 10 Ann. c. 23.

18 G. 2. c. 18. s. 5.; 13 G. 2. c. 20.

⁸ H. C. 100.

⁹ H. C. 103.

¹⁰ 1 Peck. 321.

¹¹ 18 G. 2. c. 18. s. 3.; 19 G. 2. c. 28. s.

¹² 20 G. 3. c. 17. s. 1.

¹³ 19 G. 2. c. 28.

devise, or promotion to any benefice in a church or by promotion to an office within twelve calendar months next before the election; provided the property was rated or assessed to the land-tax in the name of a proprietor through whom he derives his title, or his tenant in possession, or of a predecessor, within two years next before the election.¹ 2. Or the right is claimed in respect of any rents (other than fee farm),² tithes,³ or any chambers in the Inns of Court or Inns of Chancery, or any messuages or seats belonging to any offices. 3. Or in elections for places being counties, the right is claimed in respect of rents or any messuage or seat belonging to an office.⁴ 4. Or, in both cases, unless the property is an annuity or fee farm rent, issuing out of land specially rated or assessed, and has been duly registered;⁵ though for annuities annexed to offices, registration is unnecessary.⁶ 5. Or lastly, unless (at any time before the election) the land-tax of the property in respect of which the vote is offered, has been redeemed or purchased.⁷ The assessment, then requisite, must have been duly made. As to which; if (in the assessment) the name of the owner and the occupier are one wrong the other right, the party may still vote.⁸ So though the name of the tenant is not inserted in the prescribed form.⁹ Or where the tenant's name is in the assessment and his own not.¹⁰ And if one joint-tenant only is named, his vote (but his only) shall be received.¹¹ An assessment as 'vicar of X,' sufficiently designates the proprietor.¹² And an assessment (warranted by practice) of the land only, where the freehold consists of houses also, is sufficient.¹³ But if the occupier hold lands belonging to distinct persons, each shall be separately rated.¹⁴ A variance between the assessment and the poll-book, unless explained, vitiates the vote.¹⁵ In places not counties no assessment is requisite, except in Cricklade, where the estate must have been assessed six months before the election, unless it devolved and was assessed in the hands of a former proprietor as in cases already specified.¹⁶

¹ 20 G. 3. c. 17. s. 2.

² 2 Peck. 85.

³ Sim. 63.

⁴ 18 G. 2. c. 18. s. 4.

⁵ 20 G. 3. c. 17. s. 2. Vide 3 G. 3. c. 24. s. 2.

⁶ H. C. 155.

⁷ 42 G. 3. c. 116. s. 200.

⁸ 2 Peck. 65.

⁹ 30 G. 3. c. 35. s. 1.

¹⁰ 30 G. 3. c. 35. s. 2.

¹¹ H. C. 139.

¹² 2 Peck. 74.

¹³ H. C. 133.

¹⁴ 20 G. 3. c. 17.

¹⁵ Peck. 67, 68, 69, 70, 71, 72, 73, 78, 105. 2 Lud. 527.

¹⁶ 30 G. 3. c. 35.

And, universally, where the vote is given in respect of an annuity or rent charge issuing out of freehold lands or tenements, and granted previous to the first of June 1763, a certificate upon oath, (or affirmation,) must have been entered twelve calendar months, at least, before the first day of such election, (or where the right accrued by descent, marriage, marriage settlement, devise, or presentation to a benefice or promotion to an office, within the twelvemonth, then at any time before that day) with the clerk of the peace for the county, riding, or division, or with the clerk of the peace, town clerk, or other public officer, having the custody of the records within the city or town where the tenements lie.¹

Of voting in respect of an annuity or rent charge.

Electors for places that are not counties of themselves are, 1. Freeholders. 2. Corporators. 3. Inhabitants. 1. The value of the freehold is immaterial. And in Cricklade, copyholders;² in Corfe Castle, leaseholders for not less than three years or determinable upon a life or lives;³ and in Lugershall, leaseholders determinable on a life or lives,⁴ may vote. 2. The members of a corporation, however incomplete, may exercise the elective franchise.⁵ But unless a freeman has become such by birth, servitude, or marriage, he must have been admitted twelve calendar months before the election day.⁶ His freedom must be stamped before he votes; but at what time is immaterial.⁷ 3. Inhabitants are either inhabitants generally, or those paying scot and lot. In both cases, they must have been actually such six calendar months before tendering their vote. Unless possession was acquired by descent, devise, marriage, marriage settlement, or promotion to an office or benefice; or unless the voter has a superadded qualification.⁸ An inhabitant generally (unless defined by custom or charter) means a householder.⁹ And a householder is that person who has the exclusive right to use the outward door.¹⁰ An inhabitant paying scot and lot, is a person who is rated and pays to the church and poor.¹¹ Persons rateable and having paid to the rate, though that rate be made by officers illegal or doubtful, have a right to vote as inhabitants paying scot and

Qualifications of Electors for places that are not counties of themselves.

¹ 3 G. 3. c. 24.

² H. C. 413.

³ H. B. 411.

⁴ H. B. 411.

⁵ Sim. 124.

⁶ 3 G. 3. c. 15.

⁷ 3 Dougl. 215.

⁸ 26 G. 3. c. 100.

⁹ 2 Inst. 703.

¹⁰ 2 Fraser 449. 451.

¹¹ 1 Peck. 103. 1 Dougl. 140.

lot.¹ Though a mistake in the rate of the Christian name vitiates.² Being excused, upon one's own application, from paying the rate will not disqualify.³ But otherwise a refusal to pay on a bona fide and lawful demand.⁴

SECTION IV.

Of the Qualifications of Candidates.

Disability is of two kinds.

DISABILITY to sit in Parliament does not disqualify from being *elected*. The party, therefore, may be a candidate notwithstanding, and if elected, may, by removing his disability, take his seat. Disabilities, therefore, are of two kinds—1. From being chosen at all. 2. From sitting only.

Of persons that are disabled from being chosen at all.

The following are disabled from being chosen at all—idiots; lunatics; persons deaf and dumb; infants;⁵ women; aliens; denizens; naturalized persons, unless born of English parents;⁷ traitors;⁸ felons;⁹ popish recusants;¹⁰ persons declared by the House of Commons to be incapable of sitting there;¹¹ a candidate guilty of treating is ineligible at the ensuing election for the particular place;¹² a member, unless he first vacates his seat;¹³ a returning officer for the place over which he presides;¹⁴ clergymen;¹⁵ peers, unless Irish not being lords of parliament;¹⁶ judges;¹⁷ governor or deputy governor of the plantations;¹⁸ officers under the police acts;¹⁹ pensioners of the crown, whether during pleasure, or for a time certain;²⁰ persons holding any office or place of profit under the Crown created since October the 5th 1735; or

¹ 1 Dougl. 129.

² 2 Peck. 395.

³ 1 Peck. 507.

⁴ 2 Dougl. 396. 1 Peck. 108.

⁵ 1 Dougl. 143.

⁶ 7 & 8 W. 3. c. 25. s. 8.

⁷ 12 & 13 W. 3. c. 2.

⁸ 1 Whitl. 461. 4 Inst. 47.

⁹ 1 Whitl. 461. 4 Inst. 47.

¹⁰ 9 Journ. 384. 489.

¹¹ 13 Journ. 251. 17 Journ. 128.

32 Journ. 178. 228, 229. 243. 387.

11 Journ. 632.

¹² 7 & 8 W. 3. c. 4. s. 2. 2 Peck. 189.

Cliff. 3. 79. 131. 342. 353. 357.

392. 81. 222.

¹³ Sim. 49.

¹⁴ Journ. 2 June, 1685.

¹⁵ 41 G. 3. c. 63.

¹⁶ 39 & 40 G. 3. c. 67. art. 4.

¹⁷ Journ. 9 Nov. 1605. V. 7 G. 2. c. 56.

¹⁸ 6 Ann. c. 7.

¹⁹ 39 & 40 G. 3. c. 87. 42 G. 3. c. 76.

²⁰ 6 Ann. c. 7. s. 25. 1 G. 1. c. 56.

And a member by accepting an office of profit from the Crown, vacates his seat. He may however be re-elected. 6 Ann. c. 7. s. 26.

under the chief governor of Ireland created since the 33 G. 3.¹ persons concerned in farming or managing any duties or aids;² public contractors, unless the contract has devolved by descent, limitation, or marriage;³ though covenants in the usual indenture between the king and the master of the mint, are not accounted a public contract;⁴ parties to contracts or commissions from the Irish treasury, or with any other person on account of the public service in Ireland, unless such parties are members of any incorporated trading companies existing at the time of passing the 41 G. 3. in Ireland, consisting of more than ten persons, so far as the contract is entered into in their corporate capacity;⁵ clerk of the signet;⁶ or privy seal;⁷ or of the pells in England and Ireland;⁸ treasurer of Greenwich Hospital;⁹ *commissioners* of the customs or excise; or stamps; or of appeal for controlling or auditing customs, excise, or stamp accounts; or of the imprest accounts;¹⁰ or under the 45 G. 3. c. 91. for examining and auditing the public extraordinary accounts;¹¹ or under the 46 G. 3. c. 141.;¹² or for examining accounts of expenditure in the West Indies;¹³ or of the navy or victualling office;¹⁴ or of the navy employed in the outports;¹⁵ or of transports;¹⁶ or of sick and wounded;¹⁷ or for wine licences;¹⁸ or of the revenue in Ireland;¹⁹ a commissioner or subcommissioner of prizes; a secretary or receiver of prizes;²⁰ *clerks or deputies* of the high treasurer;²¹ or commissioners of the treasury; or lord high admiral; or commissioners of the admiralty;²² or auditors or tellers of the exchequer in England and Ireland;²³ or chancellor of the exchequer; or a principal secretary of state; or naval or victualling commissioners; or naval or military paymasters; or commissioners of stamps; or commissioners of appeals; or commissioners of wine licences; or commissioners of hackney coaches; or commissioners of hawkers and pedlars; or commis-

¹ 41 G. 3. (U. K.) c. 52. s. 5.

² 41 G. 3. U. K. c. 52.

³ 22 G. 3. c. 45.

⁴ 39 G. 3. c. 94. s. 5.

⁵ 41 G. 3. U. K. c. 52.

⁶ 57 G. 3. c. 63.

⁷ 57 G. 3. c. 63.

⁸ 57 G. 3. c. 84.

⁹ *Male* 49 in *notis*.

¹⁰ 41 G. 3. U. K. c. 52.

¹¹ 45 G. 3. c. 91. s. 7.

¹² 46 G. 3. c. 141. s. 22.

¹³ 46 G. 3. c. 80. s. 18.

¹⁴ 15 G. 2. c. 22.

¹⁵ 6 Ann. c. 7.

¹⁶ 6 Ann. c. 7.

¹⁷ 6 Ann. c. 7.

¹⁸ 6 Ann. c. 7.

¹⁹ 15 G. 2. c. 22.

²⁰ 6 Ann. c. 7. s. 25.

²¹ 15 G. 2. c. 22. 41 G. 3. U. K. c. 52.

²² 15 G. 2. c. 22.

²³ 41 G. 3. c. 52.

sioners of salt;¹ officers and persons connected with the superintendence of the public buildings now under the charge of the board of works in Ireland;² persons having any office civil or military within Minorca, or Gibraltar, other than officers having commissions in any regiment there only;³ comptrollers of army accounts;⁴ and lastly, agents of regiments.⁵

Of Persons that are disabled from sitting only.

The following are disabled from sitting only:—persons executing any office or place concerning the farming, collecting, or managing of the customs;⁶ persons concerned in collecting, managing, or farming the duties of excise, or determining appeals, or auditing the accounts thereof;⁷ members becoming bankrupt are disqualified from sitting for a twelvemonth, and if, after that time, the commission is not superseded, or their debts paid, their seats are vacated.⁸

Occupancy of an office.

Refusal to serve.

Votes given to an ineligible Candidate.

But that an official situation may disqualify (whether to sit or be chosen) there must be an occupancy of the office.⁹ Nor is a refusal to become a candidate or to serve when chosen, a disability; and therefore a person elected against his will is bound to serve.¹⁰ Votes given to an ineligible candidate are thrown away; from the first, where the ineligibility is notorious; when not, then after notice and proof tendered of the fact;¹¹ and in the latter case, should the votes given to him antecedent to notice be a majority, the election will be declared void.¹²

Of persons that are not disabled from being chosen or sitting.

With these exceptions, all persons (upon the conditions presently mentioned) are eligible. And therefore outlaws in civil suits;¹³ prisoners for debt;¹⁴ persons abroad;¹⁵ persons elected before their return;¹⁶ petitioners against a return.¹⁷ Members, however, returned for more places than one, must make their election.¹⁸ So a member accepting an office of profit from the Crown, and thereby vacating his seat, is eligible;¹⁹ a returning officer, unless for the place for which he is to make the

¹ 15 G. 2. c. 22.

² 57 G. 3. c. 62.

³ 15 G. 2. c. 22.

⁴ 6 Ann. c. 7.

⁵ 6 Ann. c. 7. 41 G. 3. U. K. c. 52.

⁶ 12 & 13 W. 3. c. 10.

⁷ 11 & 12 W. 3. c. 2.

⁸ 52 G. 3. c. 144.

⁹ 16 Journ. 519. 588. 17 Journ. 559.

¹⁰ 1 Dougl. 281. Glanv. 101. 4 Inst. 49.

¹¹ 38 Journ. 15. 245. 415. 689.—
37 Journ. 500. 560. 561.

¹² 10 East 211.

¹³ 1 Journ. 149.

¹⁴ 8 Journ. 392. Hale's Par. 116.

¹⁵ 13 Journ. 335. 358. 1 Parl. Deb.
49. Hale's Par. 116.

¹⁶ Sim. 40.

¹⁷ 5 Mar. 1727. Sim. 40.

¹⁸ 8 Journ. 247.

¹⁹ 6 Ann. c. 7.

return;¹ and a member by being appointed a returning officer does not vacate his seat;² the attorney and solicitor general; the master of the rolls; masters in chancery; the eldest sons of Scotch peers, unless for Scotland; naval and military officers; nor do the latter become ineligible by accepting a new or other commission in their services;³ the treasurership however of Greenwich Hospital, is not a military or naval commission;⁴ nor does the acceptance of a commission in the militia incapacitate;⁵ the commissioners of the treasury are eligible;⁶ the secretary of the admiralty;⁷ or of the treasury; or of the chancellor of the exchequer;⁸ the undersecretary of a principal secretary of state;⁹ the treasurer or comptroller of the navy;¹⁰ the deputy paymaster of the army;¹¹ the vice-president of the board of trade;¹² the commissioners of woods and forests, under the 50 G. 3. c. 65.;¹³ or for the redemption or sale of the land-tax;¹⁴ or under the 42 G. 3. c. 89. relative to the ordnance at Woolwich;¹⁵ the governors, directors, or proprietors of the Bank of England;¹⁶ members and other officers of the London Flour Company;¹⁷ persons having or holding any office or employment for life, or for so long as he shall behave himself well in office;¹⁸ the husband of a pensioner.¹⁹ And a candidate may become such at any time before the election closes.²⁰ If, however, no opposition is made to the proposed candidates within a reasonable time, the officer must return them.²¹ And after a reasonable time elapsed without any electors coming forward, the officer may treat the demand of a poll as a nullity, and return forthwith.²²

A candidate for the county at large must be of a certain degree; and, excepting the eldest sons of peers (including those of Scotland) and of persons qualified to be knights of the shire, and excepting likewise candidates for the two Universities, and for Scotland, must be the

Qualifications
of candidates
for counties at
large.

¹ 1 Dougl. 446. 4 Dougl. 143.

² 1 Journ. 920.

³ 6 Ann. c. 7. s. 28.

⁴ Male 49. in notis.

⁵ 42 G. 3. c. 90. s. 172.

⁶ 41 G. 3. U. K. c. 52.

⁷ 15 G. 2. c. 22.

⁸ 15 G. 2. c. 22. 41 G. 3 U. K. c. 52.

⁹ 15 G. 2. c. 22.

¹⁰ 15 G. 2. c. 22.

¹¹ 15 G. 2. c. 22.

¹² 57 G. 3. c. 66.

¹³ 50 G. 3. c. 65.

¹⁴ 50 G. 3. c. 116.

¹⁵ 42 G. 3. c. 89.

¹⁶ 15 G. 2. c. 13.

¹⁷ 39 & 40 G. 3. c. 97.

¹⁸ 15 G. 2. c. 22.

¹⁹ Male 54. a.

²⁰ 15 Journ. 94. 98. 1 Peck. 77. 8

Journ. 280. 1 Peck. 83. Sim. 52.

²¹ 1 Peck. 77. 8 Journ. 280.

²² 1 Peck. 77. 8 Journ. 280.

- Degree.** proprietor of a certain estate. In degree, he must be superior to a yeoman, and strictly should be a knight, or notable esquire or gentleman capable of being made a knight.¹ His landed estate must be of the clear yearly value of six hundred pounds; held for his own life at least, either in law or equity; and if a mortgage, the mortgagee must have been seven years in possession.² But where situated, and whether in England, Scotland, or Ireland, is altogether immaterial.³ As it likewise is, whether obtained before or during the election.⁴
- Estate.** The landed qualification of a candidate for any other place but the county at large, differs in nothing from that just described, excepting in point of value. Instead of six, it need only be three hundred pounds a year.⁵
- Qualifications of candidates for other places;** And it seems that the Universities are not restricted in their choice to persons composing their own body.⁶
- Or for the two Universities.** A candidate, if required by another candidate or two electors at the election or before the day fixed by the writ of summons for the meeting of parliament, must swear to his qualification, and the oath be returned into Chancery or the King's Bench.⁷ His wilful refusal avoids his election.⁸ And subsequent votes (which however cannot be refused) with notice, are thrown away.⁹ A refusal at any time during the election will disqualify. But it seems, that leaving the poll, on being required to take the oath, to consult whether the supposed qualification is sufficient, is not a wilful refusal.¹⁰ Notwithstanding the oath, the qualification may be afterwards inquired into.¹¹
- Qualification oath at one's election.** So, likewise, a member before he sits at a debate or votes, must swear to his qualification and give the particulars in writing; otherwise his election will be declared void.¹² And upon his election being petitioned against, he must, within fifteen days after and at the same risk, give in a rental to the clerk of the House of Commons.¹³ As must also the petitioner himself, if the sitting member questions his qualification.¹⁴ A statement in the petition, that the sitting member was a bankrupt and had no
- Qualification oath and document before taking one's seat.**

¹ 23 H. 6. c. 15.² 9 Ann. c. 5.³ 41 G. 3. U. K. c. 101.; 59 G. 3. c. 37.⁴ Male 60. Sim. 52.⁵ 9 Ann. c. 5.⁶ Roe 23, 84. 104. Peck. 19. 22. 48.⁷ 9 Ann. c. 5.⁸ 9 Ann. c. 5.⁹ H. C. 368.¹⁰ Male 60.¹¹ 2 Dougl. 349.¹² 33 G. 2. c. 20.¹³ 33 G. 2. c. 20.¹⁴ 21 Nov. 1717.

estate and effects at the time of election, is considered to be a formal and express objection, obliging the member to give in his rental.¹

SECTION V.

Of the Election and Subsequent Proceedings.

At elections for knights of the shire, the returning officer, on the day appointed, between eight and eleven a. m. proceeds in his full county, and opens the court by a proclamation for persons to give their attendance. In other places, no particular hour of the day is prescribed for commencing proceedings. In all, he begins the election by proclaiming (where it is general) the day and place of the meeting of parliament, and reading the writ or precept.² He next takes an oath (administered by one or more magistrates of the county or place, or in their absence by three electors) that he is not bribed, and will make a fair return; reads openly (either by himself or his nominee) the bribery act (though the omission will not avoid the election);³ and in places not counties, and where the right of election is wholly or in part in freemen, the statute 3 G. 3. c. 15.;⁴ and over and above these in Aylesbury, the 44 G. 3. c. 60.,⁵ in Cricklade, the 22 G. 3. c. 31.,⁶ and in New Shoreham, the 11 G. 3. c. 55.⁷ He then asks the electors, whom they elect to serve them in parliament. Whereupon the candidates offer themselves, each being proposed by one elector, and seconded by another. And the election or choice of the majority is determined by, 1. The view; 2. or the poll.

The election is determined by the view: 1. Where there is no competition; that is, where the candidates do not exceed the requisite number; 2. where, notwithstanding a competition, it is evident in whose favour the majority of voices (for silence goes for nothing) is, and no poll is demanded. In such cases, the returning officer declares the candidates duly elected, and returns them forthwith.⁸

Of opening the election.

Election by the view.

¹ Lud. 416.

² 23 H. 6. c. 14. 7 H. 4. c. 15.

³ 2 G. 2. c. 24.

⁴ 3 G. 3. c. 15.

⁵ 44 G. 3. c. 60.

⁶ 22 G. 3. c. 31.

⁷ 11 G. 3. c. 55.

⁸ 1 Peck. 77. 20. Roe 569.

Demand and duration of an election by the poll.

If, however, a *poll* is demanded, it must be granted, in spite of a majority upon the view.¹ The demand may be either by an eligible candidate or by an elector; and properly should be made before a majority has been declared upon the view; if after, within a reasonable time.² The poll commences either on the day demanded, or the day following, unless a Sunday, and then the next day. Its duration cannot exceed fifteen days; seven hours at least each day, between eight and eight; and if kept open to the fifteenth day, it closes at or before three o'clock.³ In London, the poll terminates in seven days, with three days more for the ward motes; in both cases, Sunday excepted: and upon each day's adjournment, if desired by a candidate, the poll-books must be sealed up.⁴ At Winchester, as in other places, it cannot exceed fifteen days; but it may be adjourned for three days at farthest to Newport, in the Isle of Wight: the adjourned poll to commence within four days from the close at Winchester.⁵

Assistants, &c. to the returning officer.

Deputies may be appointed by the returning officer, to assist in conducting the poll.⁶ He must also upon the written request of a candidate, nominate and swear in two or more commissioners (at a guinea a day each) to administer the several oaths (excepting the bribery oath) to be taken by the electors, and to certify the same.⁷ And upon a similar request he may add to their number if found insufficient.⁸ He likewise (on receiving a written notice three days before the election, and at the ultimate expense of the candidates) provides booths, &c. for the commissioners; to be kept open eight hours a day during the poll, with liberty to the electors of free access, and a disposition enabling the commissioners to act separately.⁹ He also appoints and swears in a sufficient number of (in Westminster not exceeding twenty-six¹⁰) clerks, at not more than a guinea a day each (in county elections, payable by the candidates) to take the poll, in the presence of himself, his undersheriff, or deputy; thence denominated poll-clerks;¹¹ though a refusal to appoint them will not avoid the election.¹² Their duty is, to set down

¹ 4 Inst. 48. 1 Whitl. 387.

² 1 Journ. 468. 8 Journ. 280.

³ 25 G. 3. c. 84.

⁴ 11 G. 1. c. 18.

⁵ 25 G. 3. c. 84.

⁶ Vide 8 W. 3. c. 25. 18 G. 2. c. 18.

19 G. 2. c. 28.

⁷ 34 G. 3. c. 73.

⁸ 34 G. 3. c. 73.

⁹ 34 G. 3. c. 73.

¹⁰ 51 G. 3. c. 126.

¹¹ 7 & 8 W. 3. c. 25. 18 G. 2. c. 18.

¹² 1 Peck, 506, 507.

each the name and abode of every freeholder whom he polls; the nature of his freehold, its occupier and situation, and if a rent, the situation of the land out of which it issues, together with the name of one or more of its owners or possessors; the candidates for whom he shall poll; the jurat or affirmation of every voter sworn; and to swear the voters, if no special commissioners are appointed.¹ In addition to these officers (but in places not counties, in Westminster only²) each candidate may have one inspector, to see that the poll-book is accurately kept; and for every poll-book, one check-book to be kept by such inspector:³ to which check-book, where the poll-book is not forthcoming, recourse would be had.⁴ The returning officer must likewise provide a sufficient number of printed forms of the declaration of fidelity, and certificates of electors having taken the oaths.⁵

Oaths (or in the case of Quakers or Moravians, solemn affirmations) to be taken by electors before they vote, are, 1. Of their being qualified.⁶ 2. Of allegiance and supremacy.⁷ 3. Of abjuration.⁸ 4. Against bribery.⁹ The first, if required by a candidate or elector;¹⁰ the second, if required by a candidate;¹¹ the third, if required by a candidate or other person present at the election;¹² the last, if required by a candidate or two electors.¹³ All which, excepting the last, may be administered by the sheriff, his undersheriff, a poll-clerk, or a commissioner;¹⁴ the last, by the returning officer or his deputy only.¹⁵ They may be taken by twelve electors at a time.¹⁶ And if the elector does not speak English, then in his own language.¹⁷ A refusal to take the bribery oath may be retracted.¹⁸ And the administering of illegal oaths will not avoid the election.¹⁹ In places that are counties of themselves,²⁰ and in places (whether counties or not) where there is no oath of qualification,²¹ a peculiar oath is prescribed; and so

Oaths to be taken by electors.

¹ 7 & 8 W. 3. c. 25. 10 Ann. c. 23.
² 18 G. 2. c. 18.

³ 51 G. 3. c. 126. vide as to Norwich
3 G. 2. c. 18.

⁴ 7 & 8 W. 3. c. 25. 18 G. 2. c. 18.
51 G. 3. c. 126.

⁵ 32 Journ. 95.

⁶ 34 G. 3. c. 73.

⁷ 18 G. 2. c. 18. 25 G. 3. c. 84.

⁸ 7 & 8 W. 3. c. 27.

⁹ 6 Ann. c. 23.

¹⁰ 2 G. 2. c. 24.

¹¹ 18 G. 2. c. 18. 25 G. 3. c. 84.

¹² 7 & 8 W. 3. c. 27.

¹³ 6 Ann. c. 23.

¹⁴ 2 G. 2. c. 24.

¹⁵ Id. Ibid.

¹⁶ 43 G. 3. c. 74.

¹⁷ 34 G. 3. c. 73.

¹⁸ H. C. 446.

¹⁹ Male 113.

²⁰ 1 Journ. 708. 9 Journ. 84.

²¹ 19 G. 2. c. 28.

²² 25 G. 3. c. 84.

likewise in Aylesbury,¹ Cricklade,² London,³ New Shoreham,⁴ and Norwich.⁵

Of tendering
one's vote.

The elector tenders his vote, by declaring to the person taking the poll,⁶ for whom he means to give it. Though the fact of a vote having been tendered, may be inferred (by a committee) from circumstances.⁷ The vote should be tendered at the proper booth. Though if admitted at a wrong one, it is not thereby lost. Yet still if not recorded, the circumstance of its having been offered at a wrong booth, will induce a committee to reject it.⁸

Describing
one's self ;

Having tendered his vote he must describe himself, by giving his name and abode, together with the situation and occupier of his property ; and correctly, otherwise a committee will reject the vote ;⁹ or refusing to give the requisite information (requisite for making the proper entry on the poll) his vote may be rejected at once.¹⁰

To say that he is a master in Chancery, not adding any place of abode, is insufficient.¹¹ But this description—' Rev. A. B.; residence, rector of X parish' is good.¹² If living in a town, he should name the street.¹³ And having more abodes than one, he may, if he pleases, give them all.¹⁴

The situation of
one's property,
and its species ;

In describing the situation of the property, he must specify the parish, hamlet, township, tithing, or place.¹⁵ And its particular kind, as whether messuage, land, rent, tithe, or otherwise.¹⁶ Though ' tenement' being taken, in its popular sense, to signify house, will do.¹⁷ As will this description—' preferment in the church.'¹⁸

And the occu-
pier.

In the case of several occupiers, one only need be named.¹⁹ And where there is actually none, the person entitled to possession may be given as the occupier.²⁰ A clergyman describing his freehold as ' rectorship' without stating an occupier, is sufficient.²¹ There are no presumptions in favour of the person given in as occupier, being such.²²

It has been considered, that a voter, if required, must

¹ 44 G. 3. c. 60.

² 22 G. 3. c. 31.

³ 11 G. 1. c. 18.

⁴ 11 G. 3. c. 55.

⁵ 3 G. 2. c. 8.

⁶ Male 130. 2 Peck. 59.

⁷ 1 Peck. 381. 396.

⁸ Roe 654.

⁹ 2 Peck. 52.

¹⁰ Male 129.

¹¹ 2 Peck. 53.

¹² 2 Peck. 54.

¹³ 2 Peck. 63.

¹⁴ 1 Peck. 390, 392.

¹⁵ 27 Journ. 227.

¹⁶ 2 Peck. 59.

¹⁷ 2 Peck. 55.

¹⁸ 2 Peck. 55.

¹⁹ 2 Peck. 61.

²⁰ 2 Peck. 61.

²¹ 2 Peck. 56.

²² 2 Peck. 61.

produce his title deeds.¹ But it seems questionable whether, supposing him willing to take the oath, the returning officer can refuse the vote.² So overseers, it is said, are bound to produce the rate, in the case of an inhabitant, paying scot and lot, voting.³ An elector, though possessed of several distinct qualifications, can vote but once;⁴ so that a subsequent vote will be a nullity.⁵ Tenants joint and in common have, before partition, one vote only.⁶

If a claimant's right to vote seems doubtful, the returning officer (all parties consenting⁷) receives the vote, subject to his ultimate decision upon further consideration. This decision is usually given the same afternoon, after the poll adjourned;⁸ and it must be given before the majority is finally declared;⁹ though with this limitation, it may be given after three o'clock on the fifteenth day.¹⁰ Leaving queried votes undecided on the poll, will not avoid the election.¹¹ But if the proper parties neglect to support them, they may be struck out.¹² In deciding on disputed votes, committees have made it a rule to increase rather than diminish the franchise.¹³ And such votes will be deemed legal, as have been so declared by the last determination of select committees.¹⁴

Of receiving votes with a query.

The poll is taken in writing. And at Norwich the freemen confined for debt vote by an adjournment to the gaol.¹⁵ The mistake, or even misbehaviour of the returning officer or poll-clerk, will not avoid the election.¹⁶ And upon clear evidence (thus the check-book coupled with other testimony), and proof of immediate application to the returning officer, an error in the poll-book will be rectified.¹⁷ Upon an equality in the poll, the returning officer has not a casting vote.

Poll taken in writing. Prisoners vote at Norwich. Misbehaviour of returning officer. Error in poll-book. Casting vote on an equality. Of closing the poll.

After a reasonable time for unpolled electors to come forward, and none appearing, the returning officer closes the poll. To this end he usually makes three proclamations, at a short distance from each other, that the poll will be closed at such an hour. And if before the final close an elector tenders his vote, the proclamations must

¹ 1 Peck. 210. 310. 374, 375. H. B. 301.

² Male 162. in notis.

³ 2 Peck. 166 n. (B.) 171.

⁴ 18 G. 2. c. 18.

⁵ 18 G. 2. c. 18.

⁶ 7 & 8 W. 3. c. 25.

⁷ 33 Journ. 162.

⁸ Male 143. in notis.

⁹ Male 141.

¹⁰ 2 Peck. 338. 342. 345. 370.

¹¹ 1 Peck. 286.

¹² 10 Journ. 520.

¹³ Male 126. in notis.

¹⁴ 28 G. 3. c. 52.

¹⁵ 3 G. 2. c. 8.

¹⁶ H. C. 342. 1 Lud. 323.

¹⁷ H. C. 344.

all be made over again.¹ In county elections, he must cast up the votes without delay, and cause them to be publicly declared.² And in all, unless he grants a scrutiny, he declares the election, according to the majority, either immediately or the day following,³ unless in London, and then within two days after the election.⁴ The poll when once declared cannot be revived.⁵ And though improperly closed by the returning officer, cannot be revived by another person.⁶

Of a scrutiny : A scrutiny is defined—"a general re-consideration, by the returning officer or others by him appointed, either of the poll altogether, or the scrutinizing and maturely examining the validity of particular votes so taken, or the grounds of certain claims which have been respectively received or rejected at the poll, and amending the same, by correcting or establishing the decisions so made, as they may prove to have been erroneous or right."⁷ The returning officer is in no case, except in London,⁸ bound to grant a scrutiny; but is at liberty so to do, if demanded (and the demand should be made either when the numbers are about to be declared or immediately thereupon⁹) by a candidate or two electors.¹⁰ It cannot be granted after a proclamation of the majority, without an adjournment.¹¹ In conducting it, his decision (where more parties than one object) is given alternately vote by vote.¹² He has no power to force witnesses to attend for the purposes of the scrutiny; though if they give their attendance, he may, with their own consent, swear them to the truth of their evidence.¹³ The scrutiny must be finished in time for the return.¹⁴

In London. In London, the proceedings, on a scrutiny, are specially regulated by statute.¹⁵

Of granting a copy of the poll; And delivering over the poll-books. The returning officer is bound to grant, at a reasonable price, a copy of the poll to any one demanding it.¹⁶ And in county elections, twenty days after the close, delivers over upon oath (administered by two magistrates) to the clerk of the peace, the poll-books, without alteration; or if there are more clerks than one, then the original to one clerk, and attested copies to the rest.¹⁷

¹ Bedfordshire case.

² 28 G. 3. c. 36.

³ 25 G. 3. c. 84.

⁴ 11 G. 1. c. 18.

⁵ Glanv. 71.

⁶ 1 Dougl. 191.

⁷ Male 213.

⁸ 11 G. 1. c. 18.

⁹ Male 218.

¹⁰ 25 G. 3. c. 84.

¹¹ 17 Journ. 73.

¹² 25 G. 3. c. 84.

¹³ 25 G. 3. c. 84.

¹⁴ 25 G. 3. c. 84.

¹⁵ 11 G. 1. c. 18.

¹⁶ 7 & 8 W. 3. c. 25. s. 6.

¹⁷ 10 Ann. c. 23.

The election being terminated by declaring the majority, the returning officer makes his return; to the sheriff, if the election was under a precept; into Chancery, if under a writ; by indenture under his own and the electors' seals, annexed to the writ or precept;¹ which return is filed and entered in statu quo by the clerk of the Crown.² No other mode can be substituted;³ though a deviation may be set right by amendment. And mere formal errors are of no moment.⁴

Where, from the right of election being doubtful, it is not clear what candidates are duly elected, the returning officer should make a double return;⁵ to be afterwards discussed and amended by the House. A mistake in the Christian name of a party returned,⁶ and so likewise a false return,⁷ may be amended at the bar of the House.

The time for making the return is, in the case of a general election, and no scrutiny, forthwith; if a scrutiny, then not later than the return day.⁸ In the case of a vacancy, and no scrutiny, not later than fourteen⁹—if a scrutiny, than thirty days from the close of the poll.¹⁰

The election is void in toto: 1. Where the original writ has issued improperly.¹¹ 2. Where the candidates are all ineligible.¹² 3. Where the election has been gained by trick or surprise.¹³ 4. So where the petitioner and the sitting member consent that the election shall be set aside (and no collusion is suspected), it will be done.¹⁴ 5. And (upon the like condition) where the sitting members decline to defend their election, the petitioners will be declared duly elected.¹⁵ 6. Where only one of the elected is ineligible, his election only is void.¹⁶ 7. So bribery or treating avoids the election of the offender only. That bribery may avoid an election, a single instance is sufficient.¹⁷ It must however occur after the warrant for issuing the writs, at a general election, has

Election when void in whole or in part.

¹ 7 H. 4. c. 15.

² 25 G. 3. c. 84.

³ Glanv. 137.

⁴ Ibid.

⁵ Male 232.

⁶ 18 Journ. 34. 38. 19 Journ. 64.

24 Journ. 56. 25 Journ. 463.

29 Journ. 52.

⁷ 20 Journ. 46. 24 Journ. 18. 30

Journ. 466.

⁸ 25 G. 3. c. 84.

⁹ 10 & 11 W. 3. c. 7.

¹⁰ 25 G. 3. c. 84.

¹¹ 8 Journ. 271. 258. 264.

¹² 20 Journ. 53. 60. 22 Journ. 819.

¹³ 4 Inst. 49. Glanv. 19. 26. 68. 76.

¹⁴ Sim. 189.

¹⁵ 3 Lud. 138, 139.

¹⁶ 20 Journ. 53. 60. 22 Journ. 819.

¹⁷ 2 Dougl. 389.

been signed; and, on a particular vacancy, after the vacancy has fallen. So that a gift after the election closed, is not bribery.¹ Unless, indeed, given in furtherance of an antecedent treaty.²

SECTION VI.

Of Petitions in Cases of Controverted Elections.

PETITIONS in cases of controverted elections, will, as more convenient, be considered in the present chapter, though, in strict method, they belong to the next.

Petition ;
by whom sign-
ed :

Time fixed and
notice given of
taking it into
consideration :

A petition complaining of undue election or return, must be signed by some claimant as voter or candidate ;³ unless in Scotland, where the signature may be by one claiming to vote at the election of any delegate or commissioner for choosing a Burgess for the district in question.⁴ Having been presented, the House appoint a day and hour for its consideration ; of which the Speaker gives the petitioners and sitting members, or their agents, a written notice, accompanied with an order to attend.⁵ And where separate petitions are presented by several on distinct interests or grounds of complaint, this order and notice is given to each.⁶ In like manner, where no return is made to the writ—on calling a new parliament, by the return day—on a vacancy in an existing parliament, within fifty-two days after its date ; or where the return is of special matters, instead of members pursuant to the requisition of the writ ; any claimant (whether to vote or be returned) thinking himself aggrieved, may petition the House ; whereupon a similar notice and order is served upon the returning officer and himself ;⁷ or if the returning officer cannot be found, or refuses to appear, the House, as presently mentioned, may authorize another to appear in his room.⁸

Time for taking
it into consid-
eration.

After the lapse of fourteen days from bringing the return into the Crown-office, and not before, the petition may be taken into consideration.⁹ And though a parti-

¹ 2 Dougl. 137.

² 2 Dougl. 137.

³ 28 G. 3. c. 52. s. 1.

⁴ Ibid.

⁵ 10 G. 3. c. 16. s. 1.

⁶ 11 G. 3. c. 42. s. 1.

⁷ 25 G. 3. c. 84. s. 10.

⁸ 25 G. 3. c. 84. s. 12. *infra*.

⁹ 11 G. 3. c. 42. s. 2.

ular time may have been named for this purpose, yet the House may change it, giving to the parties a similar notice and order.¹ If before the appointed day, the sitting member vacates his seat by death, election to the peerage, or order of the House, or (by a written declaration signed and delivered in at the table) notifies his intention not to defend; the Speaker (on receiving in the former cases a written certificate of the fact from two members) publishes the same as well in the next London Gazette as to the returning officer, who fixes a copy of the notice on the doors of the county or town hall, or of the parish church, nearest the place where the election has been usually held.² Whereupon, if less than thirty days will intervene between the day of inserting notice in the Gazette, and that appointed for considering the petition; the time is adjourned, so as to allow of that interval.³ And any claimant to vote, may, upon petitioning within thirty days from such insertion, be admitted a party in the member's room.⁴ A member so declining to defend, not only can never be allowed; he can neither sit nor vote in the House, until the petition has been decided on.⁵

Where sitting member vacates his seat or declines defending.

Within twenty-eight days in the case of an Irish petition,⁶ otherwise within fourteen,⁷ after the petition presented, or within such further time as the House may limit;⁸ the subscribers, or one of them, enter into a recognisance with sureties (before a magistrate, where the parties or sureties reside more than forty miles from London,⁹ otherwise, before the Speaker¹⁰) for their appearance as well before the House at the time fixed for considering the petition, as before any select committee appointed for trying it, or until it has, by permission, been withdrawn;¹¹ upon pain of having the order for considering the petition discharged.¹² The petition itself cannot be withdrawn, unless the member petitioned against dies or vacates his seat,¹³ or upon some event subsequent to presentation, specially stated and sworn to.¹⁴ And in case of the parties, 1. not appearing before the House within one hour after the time fixed for calling them in, for the purpose of appointing a select committee; 2. or,

Recognisance by petitioners for their appearance.

¹ 10 G. 3. c. 16. s. 3.

² 28 G. 3. c. 52. s. 2.

³ Ibid.

⁴ 28 G. 3. c. 52. s. 3.

⁵ 28 G. 3. c. 52. s. 4.

⁶ 47 G. 3. c. 14. s. 8.

⁷ 28 G. 3. c. 52. s. 5.

⁸ 28 G. 3. c. 52. s. 5.

⁹ 28 G. 3. c. 52. s. 7.

¹⁰ 28 G. 3. c. 52. s. 6.

¹¹ 28 G. 3. c. 52. s. 5.

¹² Ibid.

¹³ 28 G. 3. c. 52. s. 8.

¹⁴ 53 G. 3. c. 71.

before the committee itself; 3. or, neglecting to renew their petition within four sitting days after the commencement of every subsequent session, and until a committee is appointed, or the petition withdrawn; in either of these cases, the Speaker certifies the recognisance and default into the Exchequer, whereby it becomes estreated.¹

Recognisance
by the peti-
tioners for cost
and expenses.

Besides this recognisance, the subscribers to the petition, one or more of them (upon pain of having the order for considering it discharged²) within fourteen days after petition presented, or within such farther time as the House may limit,³ enter (before the Speaker or a magistrate as aforesaid) into another recognisance with sureties (who if sufficient may be the same persons as in the other⁴) for payment of witnesses summoned on behalf of the subscribers themselves, the clerks or officers of the House, and the party appearing in opposition to the petition, in either of these three events—1. failure in the subscribers to appear before the House at the time fixed for considering the petition; 2. a withdrawing of the petition itself; 3. the committee reporting the petition to be frivolous or vexatious.⁵

Lists of objec-
tionable votes
to be delivered.

The petitioners, moreover, and those that oppose them, must, in the case of petitions from Scotland, or from English or Welsh counties, ten, and in other cases five days before the day appointed for considering the petition, (though if the consideration be postponed or renewed in another session, the time for reckoning back these periods is the appointment of the committee for trying the petition) deliver to the clerk of the House lists of the voters to be objected to, with the grounds of objection noted against each.⁶ Nor can any other grounds be opened before the committee. And if no evidence is adduced to substantiate an objection, and it is considered by the committee to be frivolous or vexatious, the objector (upon the committee's reporting the fact) must pay to his opponent the costs thereby incurred.⁷

Preparations
for the ballot
for the Select
Committee.

Previous to the day appointed for taking the petition into consideration, the names of the whole House, inscribed upon separate labels of equal size, and rolled up alike, are prepared by the clerk (or clerk-assistant,) and by him put into a box (or parcel) in the presence of the Speaker, together with the attestation signed by such

¹ 28 G. 3. c. 52. s. 9.

² 53 G. 3. c. 71. s. 3.

³ Ibid.

⁴ 53 G. 3. c. 71. s. 6.

⁵ 53 G. 3. c. 71. s. 3.

⁶ 53 G. 3. c. 71. s. 1.

⁷ 53 G. 3. c. 71. s. 2.

clerk, purporting that the names of all the members were by him put therein, on such a day and year; whereupon the Speaker seals the box, and signing an attestation, purporting that the box was on such a day and year made up in his presence in the mode prescribed, annexes it to the outside. And upon the parties withdrawing from the bar as hereafter mentioned, and before the House enter upon any other business, any member may require, that the names of all the members which remain undrawn (under the proceeding hereafter detailed), be drawn and read aloud by the clerk or clerk-assistant.¹

At the appointed time for taking the petition into consideration, the House, previous to reading the order of the day to that effect, can proceed to no other business excepting, 1. swearing in members;² 2. receiving a report from any select committee appointed in pursuance of the acts, entering the same upon the journals, and giving the necessary orders thereon; 3. admitting the clerk of the Crown to alter a return in pursuance of an order made on the preceding day or on that day; 4. postponing the order for the purpose of attending his Majesty or his Majesty's Commissioners in the House of Lords, in consequence of any message signified to the House in the usual manner;³ 5. receiving any message from the Lords; 6. being the day appointed for the trial of any articles of impeachment, exhibited by the Commons before the Lords, proceed to any business that may be necessary for carrying on the prosecution of such impeachment;⁴ 7. calling over the House, adjourning such call, or ordering a call, and making orders relative thereto, or for enforcing the attendance of the members.⁵ But before the order of the day is read, the serjeant at arms, going with the mace to the places adjacent, appoints the immediate attendance of the members.⁶ Upon his return the House is counted,⁷ and if one hundred members are present, the petitioners (by themselves; their counsel or agents) and the counsel or agents of the sitting members, are ordered to attend at the bar;⁸ which if they do not within an hour afterwards, the order is discharged.⁹ Whereupon (the parties attending) the

Meeting of the House and proceedings previous to reading the Order of the Day.

¹ 10 G. 3. c. 16. s. 516.

² 11 G. 3. c. 42. s. 4.

³ 28 G. 3. c. 52. s. 12.

⁴ 32 G. 3. c. 1.

⁵ 36 G. 3. c. 59. s. 2.

⁶ 10 G. 3. c. 16. s. 4.

⁷ 10 G. 3. c. 16. s. 4.

⁸ 10 G. 3. c. 16. s. 5.

⁹ 28 G. 3. c. 52. s. 13.

Ballot.

door is locked, nor can any member be allowed to enter or depart, till the parties are withdrawn as hereafter mentioned. The order of the day is then read; the names of the whole House, prepared as already described, are (being divided into six equal parts) put into six receptacles placed upon the table, and after being shaken together, the clerk or clerk-assistants publicly and alternately draw out forty-nine names of members then present, and delivering them as they are drawn to the Speaker, he reads them to the House.¹ If, in drawing out this number the following names occur—a member, 1. having voted at an election; 2. being a petitioner or petitioned against; 3. whose return shall not have been brought in within fourteen days; they shall be set aside;² and if the following—a member, 4. sixty years old, swearing to the fact, and requesting to be excused;³ 5. having served in such select committee during the same session, and requesting to be excused; unless, indeed, the House before the day for considering the petition have resolved, that the number who have not so served is insufficient;⁴ and the mere nomination without any attendance throughout, is not a service;⁵ 6. swearing to any other excuse, which the House consider to be sufficient, upon the ground of inability, or the great detriment that would otherwise ensue; they shall be excused;⁶ 7. lastly, if on drawing out a name the petitioners or sitting members declare, that the party is intended for a nominee (of whom immediately after this), and to which he assents, he is (unless set aside for any of the causes aforesaid) marked down for a nominee;⁷ whereupon the drawing continues till forty-nine eligible persons are selected.⁸ This being done, two members then present, and whose names were not drawn, are added to the list, of whom one is named by the petitioners, the other by the sitting members;⁹ or upon their refusing to nominate, they are chosen by lot;¹⁰ subject in either case to be set aside, and others drawn, for the causes already mentioned, or excused at their own request.¹¹

Nominees.

Adjournment
of the Order of
the House.

If, however, either one hundred members are not pre-

¹ 10 G. 3. c. 16. s. 5.

² 10 G. 3. c. 16. s. 6.

³ 10 G. 3. c. 16. s. 7.

⁴ 10 G. 3. c. 16. s. 8.

⁵ 10 G. 3. c. 16. s. 9.

⁶ 10 G. 3. c. 16. s. 10.

⁷ 10 G. 3. c. 16. s. 15.

⁸ 10 G. 3. c. 16. s. 11.

⁹ 10 G. 3. c. 16. s. 11.

¹⁰ 10 G. 3. c. 16. s. 15.

¹¹ 10 G. 3. c. 16. s. 12.

sent, or the list of forty-nine cannot be completed; the order, and (with the exception presently mentioned) the House itself, is immediately adjourned to a particular hour on the following day, (unless Sunday, Christmas day, or Good Friday, and then to any day the House may appoint),¹ and so from day to day till the attendance be sufficient and the list formed.² The excepted case to the immediate adjournment of the House is, that, after adjourning the order, unlocking the door, and dismissing the attendants at the bar,³ they may proceed upon any order of the day for the call of the House previously fixed for that day, and direct that the House be then called over, or adjourn the order to a future day, and make such orders relating thereto, as to them shall seem meet. So likewise, if no order for a call of the House shall have been so fixed for that day, they may order a call for any future day, adding the requisite orders thereto. And finally may make such orders for enforcing the attendance of the members on the business of the House, as to them shall seem expedient.⁴ The House then adjourn to the same day to which the order stands adjourned, and so from time to time; and in case no such proceedings take place, or during their progress, there is an adjournment for want of members, the adjournment is to be taken for the day of the adjournment of the order.⁵

The mode of appointing the select committee varies where several parties, on distinct interests or grounds of complaint, present separate petitions, and where they do not. In the latter case, the mode is the following.

The fifty-one members being chosen and nominated, the door is opened, and the House may proceed upon other business.⁶ Lists of the forty-nine members are then given to the petitioners and sitting members, who immediately withdraw, together with the clerk appointed to attend the select committee; but the fifty-one members cannot leave the House, till the time for the select committee meeting is fixed as presently mentioned.⁷ Then the parties, beginning with the petitioners, alternately strike off one of the forty-nine until thirteen only remain, whose names, within an hour from the parties withdrawing from

¹ 28 G. 3. c. 52. s. 11.

² 10 G. 3. c. 16. s. 4; 11 G. 3. c. 42.

s. 3; 28 G. 3. c. 52. s. 10;
36 G. 3. c. 59. s. 1.

³ 36 G. 3. c. 59. s. 1.

⁴ 36 G. 3. c. 59. s. 1.

⁵ 36 G. 3. c. 59. s. 1.

⁶ 10 G. 3. c. 16. s. 13.

⁷ 10 G. 3. c. 16. s. 14.

Mode of appointing the Select Committee.

In the case of a single petition.

the bar, are delivered to the House by the clerk. The thirteen and two nominees are thereupon sworn at the table, "well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence;" and thereby become a select committee to try and determine the return or election¹ from the time of swearing in.² And of this number (fifteen) and no more the committee must always consist.³ The House then fix a time for the committee meeting, which must be some time within four-and-twenty hours after their appointment, unless a Sunday, Christmas day,⁴ or Good Friday,⁵ intervene; and the place of their meeting must be some convenient room adjacent to the House of Commons or Court of Requests.⁶

Proceedings
where no op-
ponent appears.

If, however, within one hour after the time appointed, the sitting member or other parties opposing the petition, shall not appear (by themselves, their council or agents), or if at the time appointed there shall be no party before the House opposing the petition, the select committee is appointed thus. The forty-nine members are drawn as in other cases, but in reducing them to thirteen, the clerk appointed to attend the committee supplies the place of the party opposing the petition, who, as often as it comes to his turn to strike out a name, strikes out that which then happens to be first. And the nominee, whom the opponent is entitled to select, is chosen by the thirteen members from among those present when the names are drawn.⁷ The same mode of reducing the list to thirteen and choosing a nominee, is adopted where a party waives his right in either of these respects.⁸

Mode of ap-
pointing the Se-
lect Committee
where there are
several peti-
tions.

The mode of appointing the select committee where several parties, on distinct interests or grounds of complaint, present separate petitions, is as follows:—Each of the parties successively strike off a member from the forty-nine until thirteen only remain; for which purpose, lists of the forty-nine are given to each; and the order in which they are to strike off the names, is determined by lot after they are withdrawn from the bar. Neither of the parties (there being more than two) can choose a nominee as in other cases; but the thirteen members, returned by the parties to the House, immediately with-

¹ 10 G. 3. c. 16, s. 13.

² 53 G. 3. c. 71. s. 18.

³ 10 G. 3. c. 16. s. 15.

⁴ 10 G. 3. c. 16. s. 13.

⁵ 28 G. 3. c. 52.

⁶ 0 G. 3. c. 16. s. 13.

⁷ 28 G. 3. c. 52. s. 14.

⁸ 23 G. 3. c. 52. s. 15.

draw ; choose two members then present in the House, whose names have not been drawn, to be added to the thirteen¹ (either of which may be set aside for the same causes as those chosen by lot) ;² and within an hour from withdrawing, report their names to the House. These two are then added to the thirteen, and the whole fifteen sworn at the table.³ In this case, members present at the time of the ballot cannot leave the house, till the meeting of the select committee is fixed.⁴

And in the case of a petition from the circumstance of no return having been made to the writ—on calling a new parliament, by the return day—on a vacancy in an existing parliament, within fifty-two days after its date ; or, from the return being of special matters, instead of members pursuant to the requisition of the writ ; if the returning officer cannot be found so as to be served with the notice or order already mentioned, or being served shall not appear ; the House authorize another to appear for him.⁵ And where several petitions are presented on distinct interests or different grounds, the House determine, from the nature of the case, whether the returning officer, or person appearing for him, shall, together with the petitioners, strike off names, or whether the list shall be reduced by the petitioners only.⁶

In case of one or more petitions from no return having been made, or from its being special.

Where more petitions than one are considered on the same day, after summoning the members and counting the House as already mentioned, all the petitioners and other parties are ordered to attend within the house at the same time, before the door is locked.⁷ A list of forty-nine is then formed for the first committee ; and successive lists for each of the others ;⁸ with however this reservation—if 120 members are not present, a list for the first committee only can be formed ; if 200 are not present, then only for two committees ; if 270 are not present, then only for three ; if 360 are not present, then only for four ; and for five committees the presence of 460 is requisite.⁹ In forming these successive lists, the names of members excused for special reasons applying only to the petition in question, are returned into the glass to be drawn upon the other petitions ;¹⁰ and the

Proceedings where more petitions than one are considered the same day.

¹ 11 G. 3. c. 42. s. 6.

² *Ibid.* ; 53 G. 3. 71. s. 20.

³ 11 G. 3. c. 42. s. 6.

⁴ 11 G. 3. c. 42. s. 7.

⁵ 25 G. 3. c. 84. s. 12.

⁶ 25 G. 3. c. 84. s. 12.

⁷ 42 G. 3. c. 84. s. 1.

⁸ *Ibid.*

⁹ 42 G. 3. c. 84. s. 2.

¹⁰ 42 G. 3. c. 84. s. 3.

same process is observed with respect to nominees as in other cases.¹ Whilst these lists are forming, the door of the house cannot be opened unless to allow the parties, as their lists are completed, to withdraw; and the clerk appointed to attend the committee may return the reduced list in the time intervening between any two ballots, whereupon the members composing it, together with the nominees, are sworn, and may depart forthwith.² The lists being formed as far as the numbers present will admit, the remaining petitions, if any, are adjourned as in other cases, and the House may proceed with any other business.³

Choice of nominees in case of several petitions.

In cases where more than two parties petition on distinct grounds or interests, the thirteen members cannot choose their nominees, until all the other select committees to be ballotted for on that day have been sworn; though if two or more committees are appointed on the same day to decide on any *such* petitions, the committee first ballotted for has the preference in choosing members to serve as nominees.⁴

Or where they are chosen by the thirteen members.

Nor in any case, where the list of thirteen are entitled to choose one or two members to be added to their number, can the choice be made, until all the other select committees to be ballotted for on that day, in the appointing of which the parties before the House name two members as already mentioned, have been sworn; if any such can be completed. And where two or more committees are ballotted for on the same day, the choice is made by each successively in the order of the ballot.⁵

Oaths by whom administered.

The oaths taken in the House are administered by the clerk or clerk-assistant, in the same manner as the oaths of allegiance and supremacy.⁶

Meeting of the Committee.
Election of a Chairman.

The committee, on their meeting, elect a chairman from amongst the members chosen by lot; and in case of an equality of voices, the member, whose name was first drawn in the House, has a casting vote.⁷ And the same course is pursued, on electing a new chairman when necessary.⁸

Sitting days.

With the exception of Sundays, Christmas day,⁹ and Good Friday,¹⁰ the committee sit every day; and cannot adjourn for more than twenty-four hours, (ex-

Adjournment.

¹ 42 G. 3. c. 84. s. 4.

² 42 G. 3. c. 84. s. 1. 6.

³ 42 G. 3. c. 84. s. 5.

⁴ 42 G. 3. c. 84. s. 7.

⁵ 47 G. 3. s. 1. c. 1, s. 2.

⁶ 10 G. 3. c. 16. s. 29.

⁷ 10 G. 3. c. 16. s. 17.

⁸ Ibid.

⁹ 10 G. 3. c. 16. s.

¹⁰ 28 G. 3. c.

clusive of excepted days¹) without leave of the House, upon special cause assigned.² In case the House is sitting at the time to which the committee is adjourned, the business must be stayed, and the House moved for a further adjournment to any time which they may fix, not exceeding twenty-four hours.³

They may, if they please, deliberate in private; their resolutions are governed by a majority; with a casting vote to the chairman in case of equality;⁴ but no member can vote who has not attended during every sitting.⁵ And in case they have occasion to apply or report to the House, in relation to adjournment, the absence of members, or misbehaviour of witnesses, and the House is then adjourned for more than three days, the committee may also adjourn to the adjournment day of the House.⁶

No member of the committee can absent himself without leave from, or an excuse allowed by the House at the next sitting, on special cause shown and sworn to;⁷ upon pain of being reported by the chairman (as he is required to do) to the House at the next sitting, taken into custody, and otherwise punished at their discretion, until it shall appear by statement upon oath, that the absence was from a sudden accident or necessity.⁸ Nor (with the exceptions presently mentioned) can the committee sit until all the members (excepting two absentees) are met;⁹ which must be within an hour after the time appointed, or a further adjournment is made and reported to the House.¹⁰ If (with the same exceptions) by death or otherwise, the numbers are reduced to less than thirteen, and so continue for three sitting days, the committee shall be dissolved, its whole proceedings avoided, and another chosen.¹¹ The exceptions are, that if the committee have sat for business fourteen days, exclusive of adjournment-days from the absence of members, and excepted days; and in like manner, if they have sat for twenty-five days; twelve in the former case and eleven in the latter, are a committee as well for business as to prevent a dissolution.¹²

Absentees.

The committee are attended by a short-hand writer, appointed by the clerk of the House, and sworn by the

Short-hand writer.

¹ 10 G. 3. c. 16. s. 20.

² 10 G. 3. c. 16. s. 19.

³ *Ibid.*

⁴ 10 G. 3. c. 16. s. 27.

⁵ 10 G. 3. c. 16. s. 28.

⁶ 11 G. 3. c. 42. s. 5.

⁷ 10 G. 3. c. 16. s. 2.

⁸ 10 G. 3. c. 16. s. 22.

⁹ 10 G. 3. c. 16. s. 23.

¹⁰ 10 G. 3. c. 16. s. 21.

¹¹ 10 G. 3. c. 16. s. 24.

¹² 28 G. 3. c. 52. s. 17.

Power of the Committee to summon witnesses and send for papers.

chairman faithfully and truly to take down in short hand the evidence adduced, and from day to day as occasion may require to transcribe the same in words at length for their use.¹ They may send for persons, papers and records; must examine upon oath,² administered by the attendant clerk;³ and may examine those who have signed the petition, the same as other witnesses.⁴ In case of disobedience to their summons, prevarication, or other misbehaviour in giving or refusing evidence, the chairman may either report the offender to the House,⁵ or (unless a peer or lord of parliament) by his warrant commit him to the serjeant at arms for not exceeding twenty-four hours, if the House is then sitting, or if not, then for not exceeding twenty-four hours after the hour to which the House is adjourned.⁶

Province of the Committee.

Their report; which is final.

The province of the committee is to try the merits of the return, or election, or both, to determine (by a majority) whether the petitioners or the sitting members, or either of them, are duly returned or elected, or whether the election be void. This determination is final; and the House, on the chairman reporting it, order the same to be entered on the journals, and give the necessary directions for confirming or altering the returns, issuing a new writ, or executing the determination.⁷ And if the determination is other than the resolution just mentioned, the committee may report the same to the House for their opinion, on the occasion of the chairman's reporting the determination; whereupon the House may confirm or disagree with such resolution, and make such orders as they choose.⁸

Report as to petition, &c. being frivolous.

Together with their final determination, the committee report to the House as well whether the petition itself as the opposition thereto is frivolous or vexatious; and where no opponent appeared, whether the election or return, or the alleged omission or insufficiency of a return, is vexatious or corrupt.⁹ And reporting in the affirmative, the opponent¹⁰ in the former case, and the petitioners¹¹ in the other two, are entitled to costs, to be taxed¹² and recovered¹³ in a mode prescribed.

¹ 42 G. 3. c. 84. s. 8.

² 10 G. 3. c. 16. s. 18.

³ 10 G. 3. c. 16. s. 29.

⁴ 53 G. 3. c. 71. s. 19.

⁵ 10 G. 3. c. 16. s. 26.

⁶ 28 G. 3. c. 52. s. 16.

⁷ 10 G. 3. c. 16. s. 18.

⁸ 10 G. 3. c. 16. s. 25.

⁹ 28 G. 3. c. 52. s. 18.

¹⁰ 28 G. 3. c. 52. s. 19.

¹¹ 28 G. 3. c. 52. s. 20, 21.

¹² 28 G. 3. c. 52. s. 22.; 53 G. 3.

c. 71. s. 10, 11.

¹³ 28 G. 3. c. 52. s. 23.

Where in the judgment of the committee, the merits of the petition depend upon a question raised respecting the right of election, or appointment of the returning officer; the parties must deliver to the clerk of the committee, written statements of the right for which they contend. Upon these statements the committee come to distinct resolutions; and report them, with their resolutions, to the House. This report is then entered on the journals; notice thereof is inserted in the next (or next but one) London Gazette, and sent by the Speaker to the returning officer; who fixes a copy upon the county or town hall, or parish church, nearest the place where the election has been usually held.¹

Report as to the right of election or appointment of returning officer.

Within six months after the day of report made, (or in case of their expiration between the dissolution of a present and meeting of a new parliament, or of their expiration during any recess, then within fourteen days after the first day of the next parliament, or of the next session of the same parliament, or of the next meeting of the House) any one may petition the House to be admitted as an opponent of the right reported valid.² And in case of no such petition, the report is conclusive in all subsequent elections.³ If, however, a petition is presented, it is ordered to lie on the table till the six months or fourteen days are expired; and within twenty-one sitting days after their expiration, a day and hour is named for considering the same, so as to allow an interval of fourteen days to come, which however the House may change from time to time; of which appointed time or its alteration, notice is given in the next (or next but one) London Gazette, and sent by the Speaker to the returning officer; by whom a copy is fixed as in the instance just mentioned.⁴ In case of renewing the petition in a subsequent session, (and if not renewed until taken into consideration, the report is conclusive;⁵) it must be presented within fourteen days after its commencement, whereupon a day and hour, not less than fourteen days to come, is named for considering it.⁶

Petition against this right.

Previous to the day of considering the petition, any one may petition and be admitted to defend the right.⁷

Petition in support of this right.

¹ 28 G. 3. c. 52. s. 25.

² 53 G. 3. c. 71. s. 15.

³ 28 G. 3. c. 52. s. 27.

⁴ 28 G. 3. c. 52. s. 28.; 53 G. 3. c. 71. s. 15.

⁵ 34 G. 3. c. 83. s. 2.

⁶ 34 G. 3. c. 83. s. 1.

⁷ 28 G. 3. c. 52. s. 29.

Appointment of
a Committee to
try this right ;
and proceedings
thereon.

The time being arrived, a committee is appointed in the mode already described, and sworn (and from that time become a committee¹) to try and determine the merits of the petition so far as it relates to any question of the right of election or appointment of the returning officer;² only no member who has served on the former committee, can serve upon this.³ The regulations prescribed for the former, equally apply to the second committee; only no recognisances are entered into, or liability for costs incurred.⁴

¹ 53 G. 3. c. 71. s. 18. ² 28 G. 3. c. 52. s. 30. ³ 53 G. 3. c. 71. s. 18.

⁴ 28 G. 3. c. 52. s. 32. Special provisions respecting petitions from Ireland, are made by 42 G. 3. c. 106.; 47 G. 3. st. 1. c. 14.

CHAPTER II.

ON THE PRACTICE AND PROCEEDINGS IN PARLIAMENT.

SECTION I.

On the Passing of Public Bills.

PROCEEDINGS in Parliament relate, 1. to the passing of bills; 2. and to certain other matters not referrible to any one general head. Of these, the former will be the subject of the first and second, the latter of the following sections.

Acts of parliament are, 1. Public or general; 2. Private or particular. Public acts are those which relate to the public in general. Private, those which relate to the inhabitants of a particular district, or to particular individuals;¹ and of these two classes of private acts, the first are called Local, the second Personal.

Public and private acts distinguished.

The distinction between Public and Private acts, though now formally recognised as well in parliament as in the printed collections, has not been applied to any statutes previous to the reign of Richard the Third. It is necessary, in the present treatise, to keep this distinction in view; since, though most regulations applicable to the passing of Public, apply to Private acts, yet over and above these there are many peculiar to the latter.

First, then, of the passing of Public bills; in discussing which, regulations not applicable to private bills, and not specially marked in the section following the present, will be noticed by the way.

The first step to a public bill, unless a bill of supply or charge upon the subject (of which hereafter), is a motion

Motion for leave.

¹ The clause commonly subjoined to a private bill,—that it shall be considered as a public act, will not change its nature, but only (and which is the sole object) dispense with the necessity of specially pleading it.

(by any member that pleases) for leave to bring it in;¹ whereupon the House assenting, orders that it shall be prepared and brought in,² sometimes by a select committee,³ but usually by the mover himself. The mode of preparation is, by drawing it out on paper with a multitude of blanks or void spaces, where any thing occurs that is dubious, or necessary to be settled by the parliament itself, such especially as the precise date of times, the nature and quantity of penalties, or of any sums of money to be raised; being, indeed, only the skeleton of the bill.⁴ To this mode, however, bills of grace are an exception, which come to the House engrossed in parchment, and signed by the king.⁵ In this state it is presented to the House; its progress through which is, in regular course, marked by five distinct stages; the first and second reading, commitment, third reading, and motion that it pass. Sometimes, however, the commitment is upon the first reading.⁶ Sometimes, too, there is no commitment at all, namely, where upon the second reading there is no objection to the bill, nor any blanks to be filled up.⁷ And bills of grace, as for a general pardon or for naturalization, pass at once upon the first reading.⁸

First reading. The bill is usually read a first time on its being presented;⁹ though the reading may be appointed for a subsequent day.¹⁰ And if on presentment neither is it read nor a day for the reading fixed, it may afterwards be read on motion,¹¹ or upon motion a day for the reading named.¹²

Second reading. The second reading may immediately follow the first; or which is more usual, may be on a subsequent day;¹³ by special appointment on the first reading, or upon a subsequent motion that the bill be now read, or a time for the reading fixed.¹⁴ Sometimes the second reading is directed to be in a full House.¹⁵ Upon the first reading, the bill is delivered, with a brief of it, to the Speaker; and after each reading, having stated to the House the title and substance of the bill, he puts the question whether it shall proceed any further.¹⁶ The introduction of the bill may

Opposition to the bill.

¹ 24 Nov. 1699.

² 24 Nov. 1699.

³ 28 Nov. 1699.

⁴ 1 Com. 182.

⁵ D'Ew. 20. 73. 464, 465. 17 June, 1747. 1 Com. 184.

⁶ D'Ew. 1769.

⁷ 6 Feb. 1699.

⁸ D'Ew. 20. 73. 464, 465.

⁹ 23 Oct. 1702.

¹⁰ 19 Dec. 1699.

¹¹ 20 Dec. 1699.

¹² 20 Dec. 1699.

¹³ 16 Nov. 1699; 29 Nov. 1699.

¹⁴ 11 Dec. 1699.

¹⁵ 20 Jan. 1699.

¹⁶ D'Ew. 17.

be originally opposed, as the bill itself may at either of the readings; and if the opposition succeeds, the bill must be dropped for that session : as it must also, if opposed with success in any of the subsequent stages.¹

After the second reading, the bill is committed, that is, referred to a committee; which is either selected by the House in matters of small importance, or else, upon a bill of consequence, the House resolves itself into a committee of the whole house. Select committees are either left to their own discretion, or specially instructed by the House.² They name one of their number for chairman.³ By whom, or by any other the committee may appoint, their conclusions are reported to the House.⁴ A committee cannot continue sitting after the House is assembled; but may adjourn from time to time. A matter referred to one committee may be afterwards transferred to another.⁵

A committee is usually empowered to send for persons and papers; when the chairman may issue his order to that effect; otherwise, the Speaker's order is the only warrant. If on personal service of the order, or what the House (upon a special motion) may substitute for personal, the witness continues obstinate, he may be committed for the contempt. So if his testimony is false, or he is guilty of prevarication, the House will severely punish him.⁶ As they will likewise one who directly or indirectly attempts to prevent the appearance or deposition of a witness, or tampers with him.⁷ A witness is privileged from arrest in coming to and attending a committee, and in returning home; and if arrested, will be discharged by the House on motion.⁸ A committee of the whole House is composed of every member; and to form it the Speaker quits the chair (another member being appointed chairman) and may sit and debate as a private member. In these committees, the bill is debated clause by clause, amendments made, the blanks filled up, and sometimes the bill entirely new modelled. After it has gone through the committee the chairman reports it to the House with such amendments as the committee have made; and then the House reconsiders the whole bill again, and the question is repeatedly put upon every clause and amendment. When the House hath agreed or

¹ 1 Com. 182.

² 27 Nov. 1699.

³ 4 Inst. 12.

⁴ 4 Inst. 12.

⁵ 11 Jan. 1699.

⁶ 24 Oct. 1702; 29 Nov. 1710.

⁷ 24 Oct. 1702; 29 Nov. 1710.

⁸ 15 Feb. 1699.

Engrossment.	disagreed to the amendments of the committee, and sometimes added new amendments of its own, the bill (unless a bill of grace, which comes to the House engrossed already ¹) is then ordered to be engrossed, or written in a strong gross hand, on one or more long rolls (or papers) of parchment sewed together. When this is finished, it is read a third time, and amendments are sometimes then made to it; and if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a ryder. ² The Speaker then again opens the contents; and holding it up in his hands puts the question, whether the bill shall pass. ³ If this is agreed to, the title to it is then settled; which used to be a general one for all the acts passed in the session, till in the fifth year of Henry 8. distinct titles were introduced for each chapter. ⁴
Third reading.	After this, the clerk, within the bill at the top upon the right hand, writes,—soit baille aux seigneurs ⁵ (or where a bill is passed by the Lords—soit baille aux commons ⁶); one of the members is directed to carry it to the Lords, and desire their concurrence; who, attended by several more, carries it to the bar of the House of Peers, (who thereupon rise ⁷) and there delivers it to their Speaker, who comes down from his woolsock to receive it. ⁸
Passing.	It there passes through the same forms as in the other House (except engrossing, which is already done) ⁹ and if rejected, no more notice is taken, but it passes sub silentio, to prevent unbecoming altercations. But if it is agreed to, the Lords send a message by two masters in chancery (or sometimes two of the judges) that they have agreed to the same: and the bill remains with the Lords, if they have made no amendment to it. But if any amendments are made, such amendments are sent down with the bill to receive the concurrence of the Commons. Amendments should be written, not upon the engrossed bill, but upon a separate paper, with references to the lines in which they occur. ¹⁰ And when finished, the bill should be subscribed—a cesty bill ovesque les amendments a mesme le bill annexe les seigneurs sont assentus. ¹¹ Amendments are not engrossed on parchment, ¹² though it is otherwise with a new clause or proviso added to the bill; which, after engrossment, is subscribed
Title.	
Transmission to the Lords.	
Proceedings in the Lords.	
Amendments.	

¹ D'Ew. 20.² Noy 84.³ D'Ew. 45.⁴ Bac. on Uses, 326.⁵ D'Ew. 45; Fitz. Parl. 1.⁶ Dy. 93. a.⁷ D'Ew. 585.⁸ D'Ew. 585.; 1 Com. 183.⁹ D'Ew. 17. 20. 148.¹⁰ D'Ew. 20. 534. 576.¹¹ D'Ew. 576.¹² D'Ew. 534. 576.

soit baille aux commons, tacked to the bill, and transmitted with this subscription—a cesty bill ovesque le schedule ou provision a mesme bill annexe, les seigneurs sont assensus.¹ If the Commons disagree to the amendments, a *conference* usually follows between members deputed from each House; who, for the most part, settle and adjust the difference: but, if both Houses remain inflexible, the bill is dropped, since one House cannot reject the amendments of the other, but must either receive the bill with the amendments, or reject it altogether;² though it may add to the amendments.³ If the Commons agree to the amendments, the bill is amended in form and sent back to the Lords by one of the members, with a message to acquaint them therewith.⁴

A conference, if it is upon the subject of a bill depending between the two houses, must be demanded by that House which, at the time of asking the conference, is in possession of the bill.⁵

Conference between the Houses.

The subjects upon which it happens that conferences are most frequently demanded are, where amendments have been made by one House to a bill passed by the other, to which amendments, the House desiring the conference have disagreed; and the purpose of the conference is to acquaint the House which first made the amendments, with the reasons for such disagreement; in order that, after considering those reasons, the House may be induced either not to insist upon their amendments, or may in their turn assign such arguments for having made them, as may prevail upon the other House to agree to them.⁶

On amendments by one, of the other's bill.

When, from inattention to the forms established upon this occasion between both Houses, either House has sent a message that they disagree to amendments, and has not desired a conference to assign their reasons for such disagreement, the bill is redelivered,—to the end, that the due course of parliament in the transmitting of things of this nature may be observed. If the House which amend the bill are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is, to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the

¹ D'Ew. 26. 576.

² D'Ew. 513. 537.

³ D'Ew. 534.

⁴ D'Ew. 576. 1 Com. 183. 184.

⁵ 4 Hats. 48.

⁶ 4 Hats. 49.

reasons why they cannot depart from them ; and if after such second conference, the other House resolve to insist upon disagreeing to the amendments, they ought then to demand a *free* conference, at which the arguments on both sides may be more amply and freely discussed. Should this measure prove ineffectual, and after several free conferences neither House can be induced to depart from the point they originally insisted on, nothing further can be done, and the bill must be lost.¹

Whenever a conference is demanded of either House, it is the sole privilege of the Lords to name the time and place at which it shall be holden. The Commons may, if they see any inconvenience either in the place or time appointed by the Lords, disagree to the holding of the conference under those circumstances, and may state to the Lords their reasons for not complying with their request ; it then rests with the Lords if they think proper to change the time or place ; but in no case will the Lords permit the Commons, nor indeed have the Commons ever claimed the privilege, to name the place or time of meeting. It has not of late been customary for either House in demanding a conference, to acquaint the other House with the number of managers they have appointed ; but whenever this is done, the form is, that the number of the Commons named for the said conference, are always double to those of the Lords.²

The House which ask the conference, should in their message clearly express the subject matter upon which the conference is desired ; or the omission will be a ground for refusing the request.³

If the reasons alleged on both sides, fail of their effect to induce either House to desist from that measure which is the subject matter of the conference, nothing remains but to hold a *free* conference ; which admits a more liberal discussion of the question under consideration, and gives an opportunity for the managers individually, and not restrained by any precise form of argument, to urge such reasons as appear to them to be of weight to support the cause in which they are engaged, and may best tend to influence the House to which they are addressed.⁴

After one free conference, no conference but a free conference can be holden touching the same subject ;

¹ 4 Hats. 49, 50.

² 4 Hats. 50.

³ 4 Hats. 50, 51.

⁴ 4 Hats. 53.

unless some question of privilege, or of the order of proceeding should arise from the conduct of any of the managers, or of either House to the other, or that some alteration should have been made in the matter as it stood at the former free conference; in that case a conference, not a free conference, may be demanded upon that particular matter.¹

The same forms are observed, *mutatis mutandis*, when the bill begins in the House of Lords; it being transmitted to the Commons by two of the assistants, who, after three congees at the table, inform the House that the Lords have passed such a bill, and then read the title.² Should they meet the Speaker at his entry into the House, they must not deliver the bill to him, but must carry it themselves into the house; and upon an occasion of their doing otherwise, the bill was returned to the Lords.³ When both Houses have done with any bill, it always is deposited in the House of Peers, to wait the royal assent; except in the case of a bill of supply, which after receiving the concurrence of the Lords is sent back to the House of Commons.⁴

Proceedings where the bill originates in the Lords.

The greater part of these regulations are applicable to bills of supply (or charge upon the subject) the same as to other bills. Certain regulations, however, are peculiar to the latter, which will now be stated.

Regulations peculiar to bills of Supply.

Bills of supply must originate in the Commons. And pursuant to an order of that House, on a motion for any public aid or charge upon the people, a day is named for considering the proposition; when it is referred to a committee of the whole House, whose opinion must be reported before any resolution or vote can pass.⁵ And this, whether to charge the subject is the sole object of the bill, or that of a particular clause only; whether the charge is by way of tax, or penalty for an offence; and whether its imposition is direct or indirect.⁶

¹ 4 Hats. 54.

² D'Ew. 688.

³ D'Ew. 45.

⁴ 24 July 1660.

⁵ 18 Feb. 1667. The following also are standing orders—1. The House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole House: (29 March, 1707.) 2. No bill shall be ordered to be brought up for any work proposed to be carried on by tolls or duties to be levied on the subject in particular places, till such petition has been referred to a committee, and they have examined the matter thereof, and reported the same to the House: (11 March, 1716; 28 Feb. 1734.) 3. The House will receive no petition for any sum of money relating to public service, but what is recommended from the Crown. (11 Dec. 1706; 11 June, 1713.)

⁶ 24 Feb. 1784.

Hence where, after the report, an additional tax is proposed, it cannot be by way of ryder in the first instance, but the bill must be recommitted.¹ So upon the report of a stamp bill, a clause offered for repealing an exemption altered by a former act, after having been read twice, was withdrawn :² since, though the object of the bill was only to prevent frauds, the effect of it would be to tax persons who by the former act were exempted from this duty.³ And though on a report from the committee of supply, the House increased the duty imposed by one of the resolutions ;⁴ yet this proceeding has always been deemed highly irregular.⁵

In like manner, where pecuniary penalties are to be inflicted (whether by a new clause or by filling up blanks), the House has been particularly cautious not to do this on the report of the Speaker in the chair ;⁶ but to commit the clause in which such penalties are to be inserted to a committee of the whole House ; or if that is thought inconvenient, to recommit the bill to the committee from whence it was reported, that the imposing of these pecuniary fines might at least receive the consideration and sanction both of a committee and of the House. And the precedents to the contrary⁷ are considered irregular.⁸

The clause, however, for appropriating the monies granted in the session, may be added ' on the report ' of the bill of supply.⁹ And so likewise may the report be amended by a different appropriation.¹⁰

To this rule (not to impose a charge upon the subject except in a committee of the whole House) almost the sole exception is, when the House address the Crown to advance money for any particular purpose, and give assurances that the expenses so incurred shall be repaid out of the grants of the next session. This practice, indeed, has generally been confined to small sums, and to services the amount of which cannot at the moment be exactly ascertained. It has also been used, for the most part, at the end of the session, when the committee of supply is closed, and when the sum required has not been thought of magnitude sufficient to adopt the form of

¹ 24 Feb. 1784.

² 26 April, 1669.

³ 3 Hats. 174, in notis.

⁴ 1 June, 1685. Vide etiam 17 Feb. 1669.

⁵ 3 Hats. 167, in notis.

⁶ 29 Jan. 1703.

⁷ 10 May, 1714 ; 11 June, 1714 ;

5 Feb. 1745 ; 24 April, 1789 ;

18 May, 1772.

⁸ 3 Hats. 181, 182.

⁹ 3 April, 1707.

¹⁰ 16 May, 1717.

opening it again.¹ However, as this proceeding of voting money by address is contrary both to the words and spirit of the standing order of 1667, it is a practice which the Speaker and those members who wish to preserve the credit and authority of the House of Commons ought to discourage, and not to permit it to be wantonly adopted or without apparent necessity.²

But though a sum cannot be increased unless in a committee of the whole House, the House has always thought itself competent, without the intervention of a committee, to lessen the sum proposed, and thereby lighten the burdens of the people;³ so likewise to strike out a penalty clause.⁴

In amending a bill of supply, the particular clause only in which the amendment occurs, need be recommitted. And upon recommitting the bill to add a tax, leave may be given to offer the clause (e. gr.) upon the third reading, when it is added by way of rider.⁵

When a question is raised between a greater or lesser sum, or the longer or shorter time for its liquidation,⁶ the lesser sum and the longer time shall first be put to the question.⁷ And the usage of the House, in compliance with this order, is, that if two sums are proposed to be granted to the Crown, or in the consideration of any public service, as of the army or navy, the number of men moved to be voted is different, or if, in the committee of ways and means, a larger and smaller tax are proposed together,—the chairman of the committee, without considering the smaller sum in the form of an amendment to the

¹ 6 March, 1706; 20 July, 1715; 16 June, 1721; 18 April, 1748.

² 3 Hats. 177. 179. General addresses of approbation and support of any measure recommended by the Crown, either by a speech from the throne, or by a message, do not come within this observation. The House may express their concurrence, and may promise their aid and assistance, without first considering the subject in a committee of the whole House. But the specific sum to be voted, or tax to be imposed, must, by the standing order of 1667, be resolved upon by a committee of the whole House. 3 Hats. 179, in notis.

³ 3 Hats. 180, 181.

⁴ 4 April, 1770.

⁵ 2 March, 1784.

⁶ This relates to the mode in which subsidies, the ancient manner of granting aids to the Crown, were given. The custom was, to give so many subsidies, to be levied in such a time; and the longer that time was, in which the subsidy was to be collected, the easier for the subjects. This manner of granting aids being changed long ago, the effect of this part of the order is dropped with it. The spirit, however, and meaning of the rule have been preserved, in several instances which have occurred, where a dispute arose touching the time of the commencement of a tax; there the later time at which such tax should be proposed to have its beginning, has had the precedency, and has been put to the question before the earlier, though the earlier was first proposed. 3 Hats. 185, 186.

⁷ 3 Nov. 1675.

question, immediately states the question with that lesser sum, the fewest number of men, or the smallest tax; and if that is carried in the negative, he then puts the question again, with the next smaller sum proposed.¹

Amendments
by the Lords in
bills of Supply.

With respect to amendments by the Lords in bills of aid and supply,—1°. As the Lords cannot begin them, so they cannot make any alterations either as to the quantum of the rate, or the disposition of it; or indeed any amendment whatsoever, except in correcting verbal or literal mistakes; and even these the Commons direct to be entered specially in their journals, that the nature of the amendments may appear, and that no argument, prejudicial to their privileges, may be hereafter drawn from their having agreed to such amendments.²

2°. In bills which are not for the special grant of supply, but which however impose pecuniary burdens upon the people—such as bills for turnpike roads, for navigations, for paving, for managing the poor, or for rebuilding churches, &c. for which purposes tolls and rates must be collected; in these, though the Lords may make amendments, these amendments must not make any alteration in the quantum of the toll or rate, in the disposition or duration of it, or in the persons, commissioners, or collectors appointed to manage it.³

3°. Where the bill or the amendments made by the Lords, appear to be of a nature which, though not immediately, yet in their consequences will bring a charge upon the people, the Commons have denied the right of the Lords to make such amendments, and the Lords have acquiesced.⁴

4°. The Commons assert, that the Lords have no right to insert in a bill pecuniary penalties or forfeitures, or to alter the application or distribution of the pecuniary penalties or forfeitures which have been inserted by the Commons.⁵

Mode of return-
ing bills of Sup-
ply.

The practice in returning bills of supply from the Lords, that the Speaker may present them to the throne, is, not to send them back by the masters in Chancery, but for the clerk of the House of Lords to deliver them privately to one of the clerks belonging to the House of Commons; and if there is any doubt which are or are not bills proper for the Speaker to present, the clerk of the House of

¹ 3 Hats. 183, 184.

⁴ 3 Hats. 155.

² 3 Hats. 153, 154.

⁵ 3 Hats. 155.

³ 3 Hats. 154, 155.

Lords, in delivering a list of bills ready for the royal assent, desires that the Speaker would mark in that list which of them appear to him to be bills of supply; and those bills are immediately sent down to the House of Commons.¹

It is customary, on the Speaker's presenting the bills of supply on the last day of the session, or any bill for the particular service of the Crown in the course of the session—for the Speaker to make a speech at the bar of the House of Lords, either immediately arising out of the subject matter of the bill itself, or when it is at the close of a session, recapitulating the principal objects which have employed the attention of the Commons during their sitting.²

Speaker's speech on presenting bills of supply.

The royal assent may be given two ways: 1. In person; when the king comes to the House of Peers in his crown and royal robes, and sending for the Commons to the bar, the titles of all the bills that have passed both Houses are read, and the king's answer is declared by the clerk of the parliament in Norman French. If the king consents to a public bill, the clerk usually declares, "*le roy le veut*,"—the king wills it so to be;³ if to a private bill, "*soit fait come il est désiré*,"—be it as it is desired.⁴ If the king refuses his assent, the language is, "*le roy s'avisera*,"—the king will advise upon it.⁵ When a bill of supply is passed, it is carried up and presented to the king by the Speaker of the House of Commons,⁶ and the royal assent is thus expressed, "*le roy remercie ses loyal subjects, accept leur benevolence, et aussi le veut*,"—the king thanks his loyal subjects, accepts their benevolence, and wills it so to be.⁷ In case of an act of grace, which originally proceeds from the Crown, and has the royal assent in the first stage of it, the clerk of the parliament thus pronounces the gratitude of the subject; "*les prelates, seigneurs, et commons, en ce present parliament assembles, au nom de tous vous autres subjects, remercient tres humblement votre majesté, et prient a Dieu vous donner en sante bone vie et longue*,"—the prelates, lords and commons, in this present parliament assembled, in the name of all your other subjects, most humbly thank your majesty, and pray to God to grant you in health and wealth, long to live.⁸ 2. By the statute 33 H. 8. c. 21.

Royal assent.

¹ 3 Hats. 161, 162.

² 3 Hats. 162, 163.

³ D'Ew. 35. 116.

⁴ D'Ew. 35.

⁵ D'Ew. 35.

⁶ Rot. Parl. 9. H. 4. in Pryn;

⁴ Inst. 30, 31.

⁷ D'Ew. 35.

⁸ D'Ew. 35.

the king may give his assent by letters patent, under his great seal, signed with his hand, (not with the stamp of his name but by another)¹ and notified in his absence to both Houses assembled together in the high house. And when the bill has received the royal assent in either of these ways, it is then and not before, a statute or act of parliament.²

Enrolment.

After this assent the clerk of the parliament transcribes every public act into a roll.³ And subscribes—*le roy le veut*. In transcribing private acts, he commences with—in *parlamento inchoat. et tent., &c. inter al. inactitat. ordinat. et stabilit. fuit sequens hoc statutum ad verbum ut sequitur, viz.;* and at the conclusion adds—*ego A. B. clericus parliamenti virtute brevis supradict. dominæ nostræ reginæ de certiorand. mihi direct. et hiis annex. certifico superius hoc scriptum verum esse tenor. act. parl. supradict. in eo brevi express. In cujus rei testimonium &c.*⁴ Public acts after enrolment are delivered into chancery, and this is the original record.⁵ But there is no enrolment without the suit of the party; and, therefore, the original bill filed among the bills of parliament, and marked with the great seal, as the course is, is the original record of it.⁶ Formerly, an act of parliament, unless specially directed to commence from such a day, took effect from the beginning of the session. But the 33 G. 3. c. 13. has directed that the clerk of the parliaments shall indorse (in English) upon every act, immediately after its title, the day, month, and year, on which it received the royal assent; which indorsement shall (unless otherwise directed by the act itself) be the date of its commencement. And by the 48 G. 3. c. 106. where any bill shall be introduced into parliament, for the continuance of any act which would expire in such session, and such act shall have expired before the bill for continuing the same shall have received the royal assent, such continuing act shall have effect from the date of the expiration of the act intended to be continued, as if such continuing act had actually passed before the expiration of such act, except it shall be otherwise provided in such continuing act, with a proviso against any one being

Date of an Act
of Parliament.

¹ Dy. 93.

² 1 Com. 184, 185. Where the assent of one or two branches of the legislature is given, the instrument is called an ordinance.

⁴ Inst. 25.

³ D'Ew. 35.

⁴ D'Ew. 36.

⁵ Hob. 109.

⁶ Hob. 109.

affected with any punishment, penalty, or forfeiture, by reason of any thing done or omitted to be done by any person contrary to the provisions of the act so continued between the expiration of the same, and the date at which the act continuing the same shall receive the royal assent.

The statute or act is placed among the records of the kingdom; there needing no formal promulgation to give it the force of a law.¹ However, a copy thereof is usually printed at the king's press, for the information of the whole land. And formerly, before the invention of printing,² it was used to be published by the sheriff of every county; the king's writ being sent to him at the end of every session, together with a transcript of all the acts made at that session, commanding him, "ut statuta illa, et omnes articulos in eisdem contentos, in singulis locis ubi expedire viderit, publice proclamari, et firmiter teneri et observari faciat."³ And the usage was to proclaim them at his county court, and there to keep them, that whoever would might read or take copies thereof,⁴ which custom continued till the reign of Henry the seventh.⁵

Promulgation.

By writ of certiorari, the tenor of the record of an act of parliament may be removed into Chancery, and delivered into the King's Bench by the Chancellor in person. It may thence, by mittimus, be sent to the Common Pleas or Exchequer. And the king by writ may command that each court the act firmiter observari faciat.⁶

Certiorari to remove the tenor of an act.

SECTION II.

On the Passing of Private Bills.

REGULATIONS prescribed for the passing of Private Bills, are 1. General. 2. or Particular. General, or those which apply to all bills universally. Particular, or those which apply to certain classes only. A noncompliance, however, with these regulations will not affect the bill when passed.

Regulations are general and particular.

¹ 4 Inst. 26; H. Parl. 36.

² 1 Ch. R. 53.

³ 4 Inst. 26; H. Parl. 36; 1 Ch. R. 51.

⁴ Ibid.

⁵ 1 Com. 185.

⁶ 4 Inst. 43.

Their classifica-
tion.

The regulations may be classed under six several heads—1. The steps preliminary to petitioning for the bill; 2. The application or petition itself; 3. The first; 4. And second reading; 5. Committee; 6. And third reading. And both general and particular will be detailed under one and the same division. The particular regulations, in alphabetical order, relate to bills for building *Bridges*—regulating *County* or poor rates, or the employment of the poor—constituting *Courts* for the recovery of small debts—compounding debts due to the *Crown*—*Divorce*—settling *Estates*—*Gaols*, houses of correction or workhouses, churches, chapels, or burying grounds—piers, ports, or *Harbours*—*inclosing*, draining, or improving any lands, fens, or commons—confirming or prolonging the term of *letters patent*—granting public *Money*—*Naturalizing*—making *Navigable canals*, aqueducts, rivers navigable, tunnels or archways, railways or tramroads—*Paving*, lighting, cleansing or improving cities or towns, or erecting or improving any town halls or market-places, and *Turnpike* roads. And in speaking of each class, we shall use a single term only, as descriptive of the whole.

Notice; and
other prelimi-
nary essentials.

1. Notice, to the parties interested, of an intended application for a private bill, is not enjoined by any general regulation; but the orders of the House of Commons enjoining this duty in particular cases, are in their effects almost universal. In bills for erecting bridges¹—for regulating county rates²—estate bills³—for erecting gaols⁴—making harbours⁵—inclosures⁶—confirming or prolonging letters patent⁷—for public money⁸—navigation⁹—paving¹⁰—and turnpike road¹¹ bills, a preliminary notice is requisite. In paving bills too, containing powers to borrow money, widen streets, &c. a committee in the Lords require that such bills should have been submitted to a vestry meeting of the inhabitants. And in all bills, where money is to be raised upon the inhabitants

¹ H. C. 23 May, 1786; 18 April, 1810.

² H. C. 30 May, 1810; referring to 20 May, 1791, and 18 April, 1810.

³ H. L. 29 April, 1799, on presenting the petition.

⁴ H. C. 30 May, 1810; 18 April, 1810.

⁵ H. C. 18 April, 1810.

⁶ H. C. 25 April, 1774; 18 April, 1810.

⁷ H. L. 28 March, 1808. H. C. 30 June, 1801.

⁸ "This House will receive no petition for any sum of money relating to public service, but what is recommended from the Crown." H. C. June, 1713.

⁹ H. L. 11 March, 1793. H. C. 7 May, 1794; 18 April, 1810; 16 June, 1795; 30 May, 1810.

¹⁰ H. C. 20 May, 1791; 18 April, 1810; 30 May, 1810.

¹¹ H. C. 25 April, 1774; 18 April, 1810; 22 July, 1807.

of a place, a vestry meeting should be called, or a printed copy or transcript of the bill should be left at some public place in the town, for the purpose of giving the inhabitants an opportunity of inspecting and perusing it.¹ Persons eighteen years old cannot be naturalized, (or restored in blood,) unless they have taken the sacrament one month before the naturalization bill exhibited.² Where a standing order respecting notice has not been strictly observed, the reasons should be disclosed and proved in the committee (or judges) to whom the petition is referred or the bill committed, and by them reported to the House; who will act thereon as under all the circumstances seems just and expedient. But if no notice whatever has been given, the House must be petitioned that it may be given forthwith; who will refer the petition to a committee and act upon their report. A notice of an intended application for *enlarging* the term of a particular act, will warrant an application for *repealing* that act and granting other powers.³

2. The requisite preliminaries having been observed, the next step to a Private Bill, with a single exception, is a petition to the House, presented by a member,⁴ for leave to bring it in.⁵ The excepted case, is a bill for reversing an attainder or outlawry; where the king's allowance, written in the margin, is sufficient without a petition. In this petition, the intended provisions must be detailed; and correctly, since no deviations will be allowed, unless upon special petition—to amend the bill, where the alterations are not extensive—to withdraw the petition and present another, where they are. The petition should be signed by all the suitors⁶ or those concerned in the consequences of the bill;⁷ with, however, the exception of such as are intended for witnesses to support it, since no signer can depose in its favour. The signatures should be by the persons themselves, not an amanuensis.⁸ In the case of crown debts, composition,⁹ divorce,¹⁰ harbour,¹¹ navigation,¹² and turnpike road¹³ bills, certain documents must be annexed to the petition. And the king's recommendation (signified by the Chancellor of

Petition; when necessary :

Its form :

Signature.

Accompanying documents.

¹ Ellis 155.

² 7 Jac. 1. c. 2.

³ 48 Com. Journ. 421.

⁴ 10 C. J. 740.

⁵ L. 7 Dec. 1699; C. 26 May, 1685.

⁶ C. 26 May, 1685.

⁷ L. 16 Feb. 1705.

⁸ C. 14 Nov. 1699; 2 June, 1774.

⁹ H. C. 25 March, 1715.

¹⁰ H. L. 28 March, 1798.

¹¹ H. C. 16 April, 1810.

¹² H. C. 7 May, 1794; 30 May, 1810.

¹³ H. C. 25 April, 1774.

the Exchequer or some other member appointed by his Majesty) is necessary to the petition for a bill relating to Crown lands.

Time for presenting it.

An application for extending the term of letters patent cannot be made, unless the term will expire within two years from the commencement of the then session.¹ In all cases, too, the petition for a private bill must be presented before the time has elapsed which, at the beginning of each session, the Houses respectively fix for receiving these petitions. Though if sufficient reasons can be given for transgressing the limit, then by stating these reasons in the petition, leave may still be obtained.

Reference to the Judges in the Lords.

The petition having been presented, there is a general order of the Lords, that "when a petition for a private bill shall be offered to this House, it shall be referred to two of the judges, who are forthwith to summon all parties before them, who may be concerned in the bill; and after hearing all the parties, and perusing the bill, they are to report to the House the state of the case, and their opinion thereupon, under their hands, and are to sign the said bill. The same method to be observed as to private bills, that are brought up from the House of Commons before the second reading of such bills, by sending a copy of the said bill, signed by the clerk, to the judges."² Every person whose testimony will be requisite to support the petition, must attend at the bar of the House of Lords, to be sworn and give evidence before the judges. Before whom likewise a certificate of the oath, under the hand of the clerk of the parliaments, must be produced. The proofs before the judges will be, 1. That the requisite preliminaries (if any) have been fulfilled; 2. That the signatures are genuine; 3. and the allegations in the petition true. The judges' report must be given in by a certain time, since at the opening of every session, the Lords made an order that they will not receive any report from the judges upon petitions for private bills after such a day. The report being prepared, the bill and report is presented to the House with a brieve for the Speaker, and upon the report being read, leave (if favourable) is given to bring in the bill. The English judges also send a list to the House of the witnesses to be sworn in relation to the bill;³ who thereupon are sworn at the bar, in order to their examination.

Witnesses.

Proofs.

Report.

¹ H. L. 28 March, 1808.

² L. 18 Dec. 1706.

³ L. 16 Feb. 1705.

In the case of a Scotch or Irish estate bill, the reference is to two of the Scotch¹ or Irish² judges; in the latter case only if the parties desire it;³ who are empowered to examine witnesses on oath.⁴

Scotch and Irish
Estate bills.

In the Commons, petitions are referred not to the judges, but to a select committee, and in certain cases only. These cases are petitions for repairing or amending highways, making or cleansing ports or harbours, making rivers navigable, or for any other work proposed to be carried on by tolls or duties to be levied on the subject in particular places⁵—building bridges—county rates—gaols—letters patent—navigation—paving. No petition for granting public money, will be proceeded with but in a committee of the whole House.⁶ And petitions for compounding crown debts are referred, in the first instance, to a committee above stairs, to take the proofs thereon, who may report the day after sitting: the House then name a day for resolving themselves into a committee on the petition; whereupon leave will be given to bring in the bill. A petition merely to inclose lands, or confirm an agreement under which they have been inclosed, is not referred to a committee; but otherwise one for draining.

Reference to a
Committee in
the Commons.

The committee may meet the day after the order of reference; and to form a committee seven must be present. The proofs before them are, 1. that all preliminaries have been observed; 2. and that the allegations in the petition are true; but not that the signatures are genuine. The evidence, though not upon oath, must be by witnesses,⁷ except in an inclosure bill, where by special order,⁸ the notices required by the standing orders of the House, and the allegations in the preamble, may be proved by affidavit taken and authenticated according to the form prescribed in the schedule to the General Inclosure act, unless the committee shall otherwise order. The committee is usually empowered to send for persons, papers and records; and if a person will not voluntarily attend or produce, the chairman signs an order requiring it. This order is served upon the party by a messenger of the House, or if personal service is impracticable, the House must be petitioned that leaving a copy at his last place of abode may be sufficient service, who on examining the messenger as to his own proceedings, will order that such

Proceedings of
the Committee.

¹ L. 16 May, 1792.

² L. 9 Dec. 1801.

³ L. 9 Dec. 1801.

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⁵ C. 28 Feb. 1734.

⁶ 29 March, 1707.

⁷ 2 Hats. 144. et seq. 145. in notis.

⁸ C. 30 June, 1801.

service be sufficient. If after service he still continues obstinate, the House will commit him for contempt.

Report.

The report of the committee is prepared by the committee clerk, pursuant to the evidence produced. And is made to the House by the member, and by him only (unless by special order of the House to the contrary) directed by the committee to make it: he may however be any member who has attended. In the case of bridge,¹ county rate,² gaol,³ harbour,⁴ inclosure,⁵ letters patent,⁶ navigation,⁷ paving,⁸ and turnpike road⁹ bills, the committee on the petition are directed to report how far the standing orders respecting such petition have been complied with.

Of bringing in the bill.

If the report is favourable, leave is given to bring in the bill. And where it is not found necessary, that a petition should be referred, in the Lords to the judges, in the Commons to a committee (as the case is with naturalization bills), leave is obtained upon mere petition. The bill as of course and upon the same day may be read a first time, provided in the Lords a copy of the petition and judge's report has been delivered to the chairman of the committees,¹⁰ in the Commons, that printed copies (except of naturalization bills) have already been delivered to the members.¹¹ In that House too, the bill must be presented by one of the members named in the order of leave;¹² or by one who has since (which may be upon his own motion) been added to the list.

First reading.

Forms are prescribed for certain bills.

Forms, to a certain extent, are prescribed to bills of a particular description; bills, namely, for courts for recovering small debts,¹³ for divorce,¹⁴ for settling estates, whether in England,¹⁵ Scotland,¹⁶ or Ireland,¹⁷ for inclosures,¹⁸ naturalization,¹⁹ navigation,²⁰ and turnpike roads.²¹ Bills also for harbours, have in some instances been limited to twenty-one years. To a bill for confirming letters patent, a copy of the letters must be annexed.²²

¹ C. 23 May, 1786.

² C. 30 May, 1810.

³ C. 30 May, 1810; April, 1810.

⁴ C. 18 April, 1810.

⁵ C. 22 Nov. 1775; 18 April, 1810.

⁶ C. 30 June, 1801.

⁷ C. 7 May, 1794.

⁸ C. 18 April, 1810.

⁹ C. 22 Nov. 1775.

¹⁰ L. 15 March, 1809.

¹¹ C. 12 November, 1705; 5 March, 1722.

¹² 33 C. J. 255.

¹³ C. 2 Feb. 1787.

¹⁴ L. 2 May, 1809.

¹⁵ L. 19 May, 1762; 29 April, 1799.

¹⁶ L. 22 May, 1799.

¹⁷ L. 9 Dec. 1801.

¹⁸ C. 25 April, 1774; 14 March, 1781; 3 March, 1800; 7 May, 1800; 2 July, 1801; 30 June, 1801.

¹⁹ St. 14 G. 3. c. 84.

²⁰ C. 7 May, 1794.

²¹ C. 12 March, 1752; 14 March 1753; 25 April, 1774.

²² C. 13 May, 1690.

On the first reading of divorce bills, certain orders are made by the Lords, namely, that notice be affixed on the doors of the House that the Lords be summoned, that the party applying for the divorce may be heard by his counsel at the second reading, to make out the truth of the allegations of the bill; that the party against whom the divorce is sued for may have a copy of the bill; that notice be given to the party of the second reading; and that he or she may be at liberty to be heard by counsel, what he or she may have to offer against the said bill; at the same time copies of which, with a copy of the bill, must be served on the adverse party, (and so likewise, when the bill comes to the Commons, the order of that House to resolve itself into a committee, with a copy of the bill, must be served,) or if he has absconded, service at his last place of abode will be substituted by the House, on petition for that purpose.

Usual orders in the case of Divorce bills.

Petitions may be presented either for or against the bill; and in any stage of the proceedings. But where a petition has been referred to a committee, their report is a preliminary to hearing a petitioner against the bill.¹ Petitions therefore against the bill are usually presented after the first reading; whereupon an order is made that the petitioners' counsel be heard on the second reading of the bill.

Petitions for and against the bill.

In the Lords, the second reading cannot be until printed copies of the bill have been left with the clerk of the parliaments for the perusal of the members; one of which is to be delivered to every person concerned in the bill (or in case of infancy, to the guardian or nearest disinterested relation) before the committee thereon meet.² But if this preliminary has been observed and there is no opposition, the second reading may be the day after the first. In the Commons, upon the first reading, a day is named for the second, which at the least must be, in bills relating to Ireland, twenty-one days,³ in navigation bills seven days,⁴ and in all others three days to come.⁵ In the interim, and after the title of the bill has been copied and examined for the votes, it remains in the clerk's custody of the Private Bill office (until laid upon the table for the second reading,) for his examination and entry thereof in the form prescribed.⁶ The fees are due upon the

Second reading.

Fees.

¹ C. 5 May, 1773.

² C. 16 Nov. 1705.

³ C. 30 June, 1801.

⁴ C. 7 May, 1794.

⁵ C. 15 Feb. 1700.

⁶ C. 5 June, 1810.

second reading, which until payment, the officers of the House may withhold.¹

In the case of
naturalization.

Before a naturalization bill can be read a second time, the party must have taken the oaths of supremacy and allegiance in the parliament house; which the Chancellor in the Lords, and the Speaker in the Commons have during the session power to administer.² And in the Lords must produce a certificate, respecting his conduct, from a secretary of state.³ In navigation bills, too, a plan must be annexed to the printed copies of the bill and laid upon the table previous to the second reading.⁴ In a divorce bill, the petitioner (unless abroad) must attend at the bar on the second reading;⁵ as likewise must his witnesses, and counsel, if he employs any.

Navigation,

And divorce
bills.

Committee.

Bills for compounding crown debts,⁶ of divorce, and for granting public money,⁷ are committed to a committee of the whole House. But in all other cases, the bill is committed, not to a committee of the whole House, but to a select committee only, which is generally formed of the members present on the second reading; and should it afterwards be proposed to add to their number, a motion must be made in the Lords, that "all lords who have attended in the then session be added to the committee," or that "the original order of commitment be waived, and that the bill be committed to all the lords who have attended in the then present session;"—in the Commons, that "all members who come to the committee have voices." In this House, eight make a committee.

Witnesses.

In the Lords, all who are to give evidence before the committee, must, previous to its meeting, be sworn at the bar of the house; which may be the same day that the bill is committed, or any subsequent day. But in the Commons the evidence is not upon oath.⁸ In both Houses, where the committee have been empowered to send for persons and papers, the chairman may issue his order for that purpose;⁹ the disobedience of which, after personal service, will be a contempt of the House; or if it cannot be personally served, then after such a mode of service as the House upon petition will substitute for personal; thus, service at the last place of abode.

¹ C. 13 June, 1751.

² St. 7 Jac. 1. c. 2.

³ L. 2 Jan. 1807.

⁴ L. 18 June, 1795.

⁵ L. 28 March, 1798.

⁶ C. 29 March, 1707.

⁷ C. 29 March, 1707.

⁸ Vide Hats.

⁹ C. 18 July,

Besides the witnesses, all persons interested should attend the committee to signify their assent; and if disabled from personal attendance, should certify their assent in writing, to be proved by a witness;¹ or in the case of an Irish bill, should signify their assent to an Irish judge, whose certificate will be taken as proof of the fact, unless the committee order otherwise. In Irish bills too, the judge's certificate that the requisite notices and the allegations in the preamble have been proved before him will, unless the committee otherwise direct, be evidence.² There are special orders relative to the consent to estate,³ inclosure,⁴ and navigation⁵ bills; and the Lords will expect the consent of the Treasury, and sometimes of the Admiralty and Trinity House, to the rates and duties to be collected by harbour acts.

Consent of Parties interested.

So petitioners for and against the bill should give their attendance; they can, however, be heard against particular clauses only,⁶ since the principle of the bill must be opposed at the bar of the House. To establish that an assent or dissent to the bill has been retracted, the signature to the petition withdrawing it must be proved; since the fact cannot be inferred from the mere signature itself.⁷

Petitioners for and against.

There is an order of the House of Lords, that copies of all standing orders relating to private bills, shall be sent with the bill to the committee.⁸

Transmission of Standing Orders.

In naturalization bills, the Lords' committee may sit the day after the second reading. But in all other cases, in the Commons one,⁹ and in the Lords two weeks' notice¹⁰ must be hung up in the lobby before the committee can sit. Though under special circumstances, leave may be obtained to sit earlier.¹¹ The agent likewise soliciting the bill must give to the clerks of the Private Bill office, three clear days' written notice of the day and hour at which the committee is to sit; to be entered by them in the private bill register.¹² The committee may sit on the

Meeting of the Committee.

¹ C. 15 Jan. 1705.

² C. 30 June, 1801.

³ L. 16 Feb. 1705; 22 April, 1799; 16 March, 1792; 9 Dec. 1801.

⁴ C. 30 June, 1801.

⁵ C. 7 May, 1794.

⁶ 26 C. J. 217. 933.

⁷ Where an application is renewed in a subsequent session, for a bill unsuccessful in a former session, and granted, it is a motion of course, to refer the minutes of evidence taken before the former committee to the present committee.

⁸ L. 16 Feb. 1705. vide etiam 11 March, 1793.

⁹ C. 15 Feb. 1700.

¹⁰ L. 20 April, 1698.

¹¹ 18 C. J. 470. 596. 20 C. J. 328, 329. 21 C. J. 326. 25 C. J. 183. 654. 26 C. J. 1015. 28 C. J. 272. 589. 597. 923, 924. 29 C. J. 1050. 31 C. J. 390. 656. 32 C. J. 873. 33 C. J. 346. 632. 782.

¹² C. 5 June, 1810.

day appointed or any future day; and may adjourn from time to time. In the Commons a written notice of the day and hour to which the committee is adjourned must be given, by the committee clerk, to the clerks in the Private Bill office, to be entered by them in the private bill register.¹ Any member may be present at the committee, but those only can vote that compose it.² It is not usual for the chairman to vote, unless there is an equality, and then in favour of the bill.

Proceedings of
the Committee.

The part of a private bill to be first considered by the committee, is the preamble. The bill is then debated clause by clause; the witnesses and petitioners heard; the blanks filled up; and amendments made; which last should be written, not upon the bill itself, but upon a separate paper. The amendments being gone through, (of which each is to be voted singly) the question is put, whether the same shall be reported to the House; and if carried, a member of the committee (usually the chairman) is directed to report the same to the House; which direction, ipso facto, dissolves the committee.

Report.

The report and paper of amendments for the House, is prepared by the committee clerk. In the Commons, the committee clerk, after the report is made out, delivers into the Private Bill office, a printed copy of the bill, with the written amendments made in the committee signed by the chairman.³ And the chairman upon reporting the bill acquaints the House that the allegations therein have been examined, and whether or not the parties concerned have given their consent, to the satisfaction of the committee.⁴ In the Lords too, there is a general regulation that the chairman, on reporting a private bill, shall state how far the standing orders of the House respecting it have been observed.⁵ And in the Commons, a similar report must be made by the committee on bills for courts for recovering small debts.⁶ And the committee on a navigation bill must annex to their report a list of the names of such persons as shall appear to them to have assented, dissented, or remained neuter.⁷ The chairman, likewise, in the Lords, on reporting amendments, explains to the House the effect and coherence of each amendment; and on the clerk's second reading of

¹ C. 5 June, 1810.

² Schobel. 49.

³ C. 5 June, 1810.

⁴ C. 31 March, 1699; 15 Feb. 1700.

⁵ L. 16 Feb. 1705; 29 April, 1799.

⁶ C. 2 Feb. 1787.

⁷ C. 7 May, 1794.

the amendments, the lord on the woolsack does the same.¹ In this House also, if there are no amendments, and the report is not special, it is made the same day that the committee break up. But in the Commons, the report cannot be till notice in writing of the day on which the bill is to be reported has been given by the agent soliciting the bill to the clerks in the Private Bill office (to be entered by them in the private bill register,) at least one clear day before the day of the report.² In navigation bills, seven days must intervene between the report and the consideration thereof;³ and three days before it is considered, printed bills must have been delivered to the committee.⁴ The Commons invariably limit a time for receiving reports on private bills; though under special circumstances, to be disclosed on motion, they will receive a report after the time elapsed.

On the report, amendments are sometimes made to the bill. But the House will not enlarge the times or dates appointed by the bill for effectuating any purpose; nor increase the penalties; though it will occasionally shorten the dates and lessen the penalties; without recommitting the bill; but such amendments are rarely proposed. When therefore such, or any other material alterations are wished to be made in the bill, after it has gone through a committee, it is most advisable to have the bill reported; and the House on being informed by the member who makes the report that it will be necessary to make some further alterations in the bill, it will be recommitted for that purpose.⁵

Amendments.

On the report, the House has been very cautious not to receive a clause, in which any pecuniary fine is imposed, the Speaker being in the chair; but to commit such clause to a committee of the whole House; or if that is thought inconvenient, to recommit the bill to the committee from whence it was reported, that the imposing of such pecuniary fines might at least receive the consideration and sanction both of a committee and of the House.⁶

Penalty clause.

The amendments, if any, which are made upon the report and upon the third reading, are entered by one of the clerks in the Private Bill office, upon the printed copy of the bill, as amended by the committee; which clerk signs

Entry of
Amendments.

¹ C 5 April, 1707.

² C 5 June, 1810.

³ C. 7 May, 1794.

⁴ C. 7 May, 1764.

⁵ Supra.

⁶ Supra.

the copy as amended, in order to its being deposited and preserved in the office.

Of recommitting the bill.

If the House are not satisfied with the report, or consider that the subject has not been sufficiently canvassed, they will recommit either the whole bill or some particular part of it, in order to receive further information, or more narrowly to inquire into the nature and expediency of the measure.¹

Engrossment.

Upon the report being agreed to, the bill with the amendments will be ordered to be engrossed. In the Lords, before a navigation bill can be read a third time, certain documents are necessary.²

In which House a private bill should originate.

Such are the regulations, general and particular, prescribed for the passing of private bills. It remains to consider in which House a private bill should originate. And the rule upon this subject is, that all bills which may in their consequences affect the right of the peerage; bills for the restitution of honours or in blood, for reversal of outlawries; and bills of judicature, that is, for giving judgment in a legislative way, must begin with the Lords. And that all bills by which money is authorized to be raised upon his Majesty's subjects, for any purpose or in any shape whatever; either by collecting tolls, rates, or duties, or by inflicting pecuniary penalties and fines for offences; or which may by construction be considered as imposing a burden on the people, must begin in the House of Commons. Of this sort, are bills for inclosing and draining lands, making turnpike roads, navigations, canals, forming harbours, paving and lighting streets, building bridges, erecting poor-houses, churches, gaols, for uniting parishes, and making parishes distinct, regulating county or poor-rates, erecting courts for recovering small debts, confirming or prolonging letters patent.

So likewise where, from the different constitution or modes of proceeding in either house, there is a greater propriety in commencing a bill in one than the other, it should be done, though not enjoined by any positive rule; unless indeed the bill contains clauses which render it necessary that it should be commenced in the other house. Hence the practice is, for divorce and estate bills to commence in the Lords. Naturalization and name bills are begun indifferently in either house.

¹ 3 Hats. 158. 26 C. J. 51. 30 C. J. 70.

² L. 11 March, 1793.

SECTION III.

Of the Meeting of Parliament.

A NEW parliament meets at the return day of the writ, unless the king is pleased to postpone the meeting to a future day; which may be done by a writ patent under the great seal tested before the day of the return, directed prælati, magnatibus, proceribus hujus regni, ac militibus, civibus, et burgensibus, &c. and read on the return day in the House of Lords, before the Peers and such of the Commons as choose to attend.¹ In such case, the parliament begins at the day to which it was prorogued, and not before.²

Day of meeting.

The constituent parts of a parliament are, the king's Majesty, sitting there in his royal political capacity, and the three estates of the realm; the Lords spiritual, the Lords temporal (who sit together with the king in one house), and the Commons, who sit by themselves in another, anciently St. Stephen's chapel. And the king and these three estates, together, form the great corporation or body politic of the kingdom, of which the king is said to be caput, principium et finis. For upon their coming together the king meets them, either in person or by representation; without which, there can be no beginning of a parliament:³ and he also has alone the power of dissolving them.⁴ Where the king is absent from the kingdom, a special commission may go to the capitalis justiciarius of the realm, to hold and proceed in parliament.⁵ And if the custos of the realm be engaged or otherwise disabled, the commission may be to hold it in the name of the king, or of himself.⁶ Where the king is at home, but disabled by sickness or infirmity, the commission issues to certain lords of parliament;⁷ and though parliament has been opened by the king in person, it may, after prorogation, be summoned before commissioners.⁸

Constituent parts.

On the appointed day, the parliament being assembled, the king sets forth in the House of Lords, the causes of

Opening of the Parliament.

¹ 4 Inst. 7.² Ibid.³ 4 Inst. 6.⁴ 1 Com. 153.⁵ 4 Inst. 6.⁶ Cott. Ab. 19.⁷ 4 Inst. 6. Rush. 33. Ha. Parl. 3.⁸ 4 Inst. 7.

Choice of a
Speaker.

convening it, either by his own mouth, that of his chancellor, or some other appointed person.¹ Whereupon, the Commons at the king's command² proceed to elect their Speaker, which, for dispatch of business, each house of parliament has. The Speaker of the House of Lords, whose office it is to preside there, and manage the formality of business, is the lord chancellor, or keeper of the king's great seal, or any other appointed by the king's commission: and, if none be so appointed, the House of Lords (it is said) may elect.³ The Speaker of the House of Commons is chosen by the House;⁴ but must be approved by the king, who though he cannot nominate may nevertheless recommend;⁵ nor is he, till confirmation, called Speaker.⁶ Being chosen, he is presented to the king in the House of Lords, and there, for form's sake, excuses himself.⁷ If approved, he prays, on behalf of the Commons, 1. Freedom of speech, and from arrest, and all their ancient privileges;⁸ 2. Pardon for mistakes,⁹ and candid construction of their proceedings,¹⁰ and that he may resort to the Commons for a declaration of their intent;¹¹ 3. Access to the king.¹² The House of Commons cannot assemble without their Speaker.¹³ So that, during his absence, whether from illness or any other cause, no business can be done, nor any question proposed, except a question of adjournment, and that question must be put by the clerk.¹⁴ Hence, when disabled from attending, he shall be discharged.¹⁵ The Speaker of the House of Commons cannot give his opinion or argue any question in the House (unless in a committee of the whole House); but the Speaker of the House of Lords, if a lord of parliament, may.¹⁶

Receivers of
Petitions.

Whilst the Commons are choosing their Speaker, four justices and two masters in Chancery are named by the lords to be receivers of such petitions for England, Ireland, Wales, and Scotland, as shall be delivered within six days ensuing. And in like manner three justices and two masters are named receivers of such petitions for

¹ 4 Inst. 7, 8.

² D'Ew. 41.

³ 1 Com. 181.

⁴ 4 Inst. 8. D'Ew. 41.

⁵ 4 Inst. 8. Cott. Abr. præf. 14. b.

⁶ Sed vide 16 Nov. 1699; 21 Oct. 1702.

⁷ 4 Inst. 8. Rush. 480.

⁸ 4 Inst. 8. Rush. 119. Ha. Parl. 4.

⁹ Ibid.

¹⁰ Rush. 484.

¹¹ 4 Inst. 8. Rush. 119. Ha. Parl. 4.

¹² Ibid. Rush. 484.

¹³ 4 Inst. 8.

¹⁴ 2 Hats. 222, 223.

¹⁵ 4 Inst. 8.

¹⁶ 1 Com. 181.

Gascoign, Guien, Poitiers, Normandy, Anjou, &c. as shall be delivered within the same period. Then six temporal and two spiritual lords are appointed triers of the petitions of England, Ireland, Wales, and Scotland, and as many more for those of Gascoign and the other places, notwithstanding they are now lost to the Crown. These triers, or any four of them, assisted by the king's counsel, sit in the treasury chamber, and determine whether the petitions are proper to be proposed to the Lords.¹

After the Speaker chosen, and usually before a bill is read,² the Commons are summoned to attend the king in the House of Peers, to hear the king's speech; whereupon the Speaker proceeds to the Lords, followed by such members as choose to accompany him. The speech having been delivered, the Speaker returns, the oaths (of which hereafter) are taken by the members,³ and usually a bill is read, before the speech is reported to the House, since from that time only does the session commence;⁴ though there are instances of reporting the speech without first reading a bill;⁵ and others again of delaying the report till the usual committees are appointed and orders made.⁶ The report being made, (from a copy prayed by

The King's Speech.

Commencement of the Session.

Report of the King's Speech.

¹ Inst. 11.

² 1702. 1710.

³ 21 Oct. 1702.

⁴ 23 Oct. 1702; 29 Nov. 1710.

⁵ 16 Nov. 1699.

⁶ 23 Oct. 1702. The question—whether it is of necessity, that at the meeting of the House after a prorogation, a bill should be read for the opening of the session, before the report of the king's speech, or before the House proceed on any other business, was very much agitated on the 15th of November 1763; when as soon as the members were sworn at the table, Mr. Wilkes, and Mr. Grenville, then Chancellor of the Exchequer, arose in their places, the first, to make a complaint of a breach of privilege, in having been imprisoned, &c. and Mr. Grenville, to communicate to the House a message from the king, which related to the privileges of the House; the Speaker at the same time acquainted the House, that the clerk had prepared a bill, and submitted it to them, whether, in point of form, the reading of the bill should not be the first proceeding towards opening the session. A very long debate ensued, which of these three matters ought to have the precedence, and at last it was carried in favour of the bill. Notwithstanding this decision, the custom of reading a bill immediately on the return from the House of Lords, is probably nothing more than a claim of right on the part of the Commons, that they are at liberty to proceed in the first place, upon any matter which they think material, without being limited to give a preference to the subjects contained in the king's speech. If this is so, the House might certainly have proceeded, and very regularly, either upon the king's message, or Mr. Wilkes's complaint, before they read the bill. And whoever (continues Mr. Hatsell) will examine the Journals accurately, will find several instances, where other business has been done before the bill is read. The reading of the bill is "for form's sake," and may be suspended till after other matters, if the House shall think the consideration of those matters of greater importance. (2 Hats. 82, 83.) In the House of Lords, however, it seems settled by one of their standing orders, "that at the beginning of the session, after prayers said, some bill, pro forma, is to be read; then his Majesty's speech is to be reported; and then the committee of privileges is to be appointed." (2 Hats. 83. n.)

Address of
thanks.

the Speaker¹⁾ the House commonly votes thanks for the speech,² and fixes a day for taking it into consideration³ in a committee of the whole House. The address of thanks is drawn up either by a committee, or simply upon the vote itself and debate;⁴ and when by the former, it is agreed to or amended by the House.⁵ It is usually presented to the king by the whole House;⁶ for which purpose, the members of the privy council are appointed to inquire at what time it is the king's pleasure that the House shall attend him.⁷ The time being come, the usher of the black rod or his deputy⁸ summons the House. These matters being premised, general committees are appointed and orders made.⁹

Amongst these, thus appointed at the commencement of every session, there are two committees (of the whole House) which demand a particular notice; one the committee of supply—for considering of the quantum of the supply granted to the Crown for the purposes of the state; the other, the committee of ways and means—to find out ways and means for raising that supply.

Committee of
supply.

The committee of supply is a committee of the whole House, appointed by the House, in consequence of the order of the 18th February, 1167, to consider of the supply granted to his Majesty by a former vote or determination of the House. As it takes its origin from the aids which are demanded by the Crown, it can properly have no cognizance of any matters but such as are laid before the House of Commons, by the direction of the Crown, for the public service; and therefore if at any time it is thought expedient or desirable to vote a sum of money in the committee of supply, which is not intended for the service of the army or navy, or ordnance, or any other aid demanded by the Crown, the House must, in order to entitle the committee to take this matter into their consideration, enable them so to do by particular instruction. And here again the House have imposed another restraint upon themselves in the exercise of their privilege—the sole right of granting away the money of their fellow-subjects; for by a resolution of the 11th Dec. 1706, which, upon the 11th June, 1713, was declared to be a standing order, the House resolved, that they would receive on

¹ 16 Nov. 1699; 29 Nov. 1710.

² 23 Oct. 1703; 29 Nov. 1710.

³ 16 Nov. 1699; 23 Oct. 1702.

⁴ 29 Nov. 1710.

⁵ 30 Nov. 1710.

⁶ 30 Nov. 1710.

⁷ 30 Nov. 1710.

⁸ 16 Nov. 1699.

⁹ Feb. 1700; 16 Nov. 1699;
23 Oct. 1702.

petition for any sum of money relating to public service, but what is recommended from the Crown. And the uniform practice of the House has applied this order, not only to petitions for public money, or for money relating to public service, but to all motions whatever for grants of money, whether the grounds of such applications have been public or private. Upon this principle, before the committee of supply can take into their consideration the providing for the pay and clothing of the militia, or even before the House can give the committee a power to consider of this service, some member of the House of Commons, authorized by the Crown, must acquaint the House that the king recommends the same to their consideration. It arises out of the nature and appointment of this committee, which is "to consider of the supply granted to his Majesty," that the form of all its resolutions, though they are for mere private purposes, is by way of grant to the Crown, to be applied by the Crown to the ends specified in the resolution.¹

The object of the committee of ways and means is, as is expressed in the title of it, to find out modes of raising the supply which the House (upon resolutions reported from the committee of supply, and agreed to) have granted to his Majesty: and the first consideration attending this proceeding is, that the money proposed to be raised upon the subject by loans or taxes, or any other mode, should not exceed the sum already granted in the committee of supply. It is, for this reason, incumbent upon the Chancellor of the Exchequer, or whatever member of the House of Commons proposes the ways and means for raising money for the service of the current year, to explain and show to the House, by a detail of the sums granted for the several services, that the amount of those sums will be a sufficient justification, in point of quantity, to the committee of ways and means, to adopt such measures, and impose such taxes, as shall be then recommended to them.²

Committee of
ways and
means.

The committee of ways and means, being specially appointed for considering such propositions only as may raise the supply granted in the current session of parliament, ought not, nor can properly take any other matters into their consideration, without particular powers given them for that purpose by instruction from the House. And therefore where it is found necessary to impose taxes

¹ 3 Hats. 193—196.

² 3 Hats. 196, 197.

or to charge duties, which are not to be applied towards the service of the year, this, if done in the committee of ways and means, must be done by special authority from the House; but it may as well be done, and indeed, with more propriety, in any other committee of the whole House, appointed for that particular purpose.¹

Should the committee close without directing the chairman to ask leave to sit again; and it is afterwards found necessary to vote a farther sum; the same form, by speech or message from the king, and proceedings thereupon, are observed in opening the committee of supply again, as at the beginning of a session.² And where the committee drops, from the chairman neglecting to ask leave to sit again,³ or, from an adjournment for want of forty members,⁴ it may be revived by special order.

Appropriation
bill.

When the committees of supply and ways and means are closed, the House of Commons pass a bill, in which the several grants that have been made in the committee of ways and means, by land-tax, malt-tax, loan, sinking fund, &c. are recapitulated, and directed to be applied to those services which have been voted in that session in the committee of supply; specifying the particular sums granted for each service, and appropriating the money that shall be paid into the Exchequer for their discharge; and directing that the said supplies shall not be applied to any other than the purposes mentioned in the said act.⁵

The sums voted for the different heads, upon account of the army, ordnance, militia, foreign subsidies, and other particular services, are in the bill of appropriation separately and specifically applied to those services for which they are granted. But in the instance of the supply granted towards the navy, the practice has been different. In this service all the different grants upon the head of wages, victualling, ordnance, ordinary and extraordinary, are, in the appropriating bill, added together, and the whole sum, arising out of all these separate grants, is appropriated generally for the navy service. This distinction in the form of proceeding between the navy and all the other public services, has arisen from necessity, and the impossibility that there appears to be, from the nature of the sea service, to confine the expenditure of

¹ 3 Hats. 197—199.

² 22 Jan. 1706.

³ 22 Jan. 1717; 14 March, 1743.

⁴ 22 April, 1809.

⁵ 3 Hats. 201.

the sums granted for wages, or building, or rebuilding of ships, to those immediate services and no other.¹

By the 5th of Elizabeth, chapter 1, section 16, all members, before they come into the parliament house, are to take the oath of *supremacy* before the lord steward for the time being, or his deputy or deputies, for that time to be appointed. By the 7 of James the First, chapter 6, section 8. the oath of *allegiance* is, in like manner, ordered to be taken by members, before they come into the house. By the 30 of Charles the Second, statute 2, every member is to take the oaths of allegiance and supremacy, and make and subscribe the declaration against *transubstantiation*, between the hours of nine in the morning and four in the afternoon, at the table, in the middle of the House of Commons, while the House is sitting, with the Speaker in the chair. By the 1 of William and Mary, chapter 8, the oaths of allegiance and supremacy are altered, and others substituted in their room. By the 13 of William the Third, chapter 6, section 10, every member is to take the oath of abjuration at the table, in the same manner and between the same hours, as he takes the oaths of allegiance and supremacy, by the 30 of Charles the Second. By the 33 of George the Second, chapter 20, every member (except as is therein excepted) is, before he presumes to vote in the House of Commons, to take the oath of his being qualified, and to deliver in his qualifications at the table.²

Oaths to be taken by Members.

Such members as are elected at a general election, are not introduced ; but as soon as they have been sworn out of doors, before the lord steward, or one of his deputies, they come up to the table, and there take the oaths appointed, and subscribe the declaration. But when a member is elected on a writ issued after the general election, such member must be introduced by two other members, and is brought up from the bar, making three obeisances to the chair ; and this in order, as it is expressed in the rule of the 23d of February, 1688, that the member may be known to the House.³

Introduction to the House.

The limitation of time, by the 30 of Charles the Second and by the act of the 13 of William the Third, for members

Time of taking the Oaths.

¹ 3 Hats. 209, 210. ² 2 Hats. 86—88. Notwithstanding all these laws which are introductory to a member's taking his seat in the House, a person when returned is, though he should not have taken his seat, to all intents a member, except as to the right of voting, and is entitled to the same privileges as every other member of the House. 2 Hats. 88, in nota.

³ 2 Hats. 88, 89.

to be sworn in the House being from nine o'clock till four, is, it seems, the reason for the Speaker's continuing to sit in the chair till four o'clock, though it should have appeared, by a division or otherwise, that forty members are not present. It is also for the same reason, that if forty members do not appear before four o'clock, the Speaker waits till that hour, and then takes the chair and adjourns the House.¹

Cessation of
other business.

When a member appears to take the oaths, within the limited time, all other business is immediately to cease, and not to be resumed till he has been sworn and has subscribed the roll.²

Majority.

In each house, the act of the majority binds the whole; and this majority is declared by votes openly and publicly given.³ Every peer, by licence obtained from the king,

Proxies.

may make another lord of parliament⁴ his proxy, to vote for him in his absence;⁵ which a member of the Commons cannot do.⁶ And the usual course is, for a temporal lord to make a temporal lord his proxy, and for a lord spiritual to make a spiritual lord.⁷ Two (but not more⁸) may be named for proxies. So, *conjunctim et divisim*.⁹ In which case, if both are present, they must agree in opinion, or the vote goes for nothing.¹⁰ The peer by coming into the house himself, revokes his proxy.¹¹

Non-attendance of Mem-
bers.

In case a member, whether peer or commoner, neglects to attend, he may be amerced and otherwise punished by the House, according to ancient usage;¹² and a commoner moreover by departing from the house without licence of the Speaker and Commons, entered in the book of the clerk, loses his wages;¹³ and refusing to attend, may be expelled.¹⁴ Nor can a member absent from illness, be discharged,¹⁵ nor when absent on official duty, thus, on an

¹ 2 Hats. 99.

² 3 Hats. 90.

³ 1 Com. 168.

⁴ 4 Inst. 12.

⁵ 4 Inst. 12. Seld. Baronage, p. 1. c. 1. 1 Com. 168.

⁶ 4 Inst. 12. Ha. Parl. 11.

⁷ Seld. 3 vol. 2 p. 1477.

⁸ Rush. 269. Vide 4 Inst. 12. Seld. 3 vol. 2 p. 1477. antecedent to this order.

⁹ 4 Inst. 12. Seld. 3 vol. 2 p. 1477.

¹⁰ 4 Inst. 13. Ha. Parl. 11.

¹¹ 4 Inst. 13. Ha. Parl. 11.

¹² 5 R. 2. c. 4. 4 Inst. 44. D'Ew. 309.

¹³ 6 H. 8. c. 16.

¹⁴ 7 March, 1715.

¹⁵ 2 Hats. 36. Notwithstanding his disorder be incurable. Ibid. The impossibility of ascertaining the degree of infirmity under which a member may labour, and of pronouncing that he is incurable, is a sufficient cause for not removing him, though to all appearance he may never be able to attend again; besides that such a practice would open a door for members to quit their seats under this pretence; and therefore "when they are once chosen, they are not to be discharged, but by operation of law." Ibid.

embassy;¹ or when in execution;² an outlaw;³ or in captivity.⁴

SECTION IV.

Of the Privileges of Members.

MEMBERS are entitled to freedom of speech upon mat- Freedom of
ters debated in parliament.⁵ None therefore shall be put speech.
to answer elsewhere for what he has spoken in the house,
though with an evil intention.⁶ And by the statute
1 W. & M. st. 2. c. 2.⁷ it is declared as one of the liberties
of the people, "that the freedom of speech, and debates,
and proceedings in parliament, ought not to be impeach-
ed or questioned in any court or place out of parliament.

Antecedent to the statutes in the margin,⁸ persons hav- Privilege from
ing privilege of parliament claimed for themselves and arrest.
and their servants, an exemption not from arrest only, but
from being sued in any civil proceeding.⁹ Though by an
order of the Lords, peers might be compelled by process
out of Westminster hall to pay obedience to a habeas
corpus directed to them.¹⁰ The statute however of the
10 G. 3. has taken away the exemption from being sued,
though not from being arrested. This privilege in the
case of peers is the privilege of peerage, not of parlia-
ment; it extends therefore to peers not members of the
legislature, namely, Scotch, Irish, and Roman Catholics;¹¹
and is perpetual. In the case of members, the privilege
is that of parliament only; its duration is for forty days
after every prorogation, and forty days before the next
appointed meeting;¹² and upon a dissolution a reasonable
time is allowed for returning home.¹³ It may be claimed

¹ D'Ew. 244. 9 Feb. 1575; 19 Nov. 1606; 24 April, 1641.

² D'Ew. 244. 9 Feb. 1575. 2 Edw. 4. 8. a. Meor 57. Vide 1 Jac. 1. c. 13.

³ 28 May, 1624; 17 Feb. 1667.

⁴ 9 Nov. 1605.

⁵ Rush. 662.

⁶ R. in Parl. 1667. Vide Cro. Car. 604.

⁷ Vide etiam st. 13. Car. 2. c. 1.

⁸ 12 & 13 W. 3. c. 3; 2 & 3 Ann. c. 18; 11 G. 2. c. 24; 10 G. 3. c. 50.

⁹ Inst. 24; Dy. 60. a. in marg. D'Ew. 43. 66. 83, 84, 85. 629. 655. H. Parl. 29.

¹⁰ L. 7 Feb. 1757; 8 June, 1757.

¹¹ Fort. 165.

¹² 2 Lev. 72.

¹³ Fort. 159; Str. 985; B. R. H. 28.

in all cases but treason, felony, and breach of the peace¹ (of which latter a seditious libel is an example²); against an attachment therefore out of Chancery,³ or out of a court of law for nonpayment of money or performance of an award pursuant to its order;⁴ and as well in the king's as a subject's suit;⁵ and so likewise against informations.⁶ Nor can it be waived.⁷ But a prisoner by being chosen a member cannot claim to be discharged;⁸ and, as a consequence, when in prison upon the mesne process of the King's Bench, he may be declared against as in the custody of the marshal.⁹ And the 4 G. 3. c. 33. has provided that any trader, having privilege of parliament, may be served with legal process for any just debt (to the amount of 100*l.*), and unless he makes satisfaction within two months, it shall be deemed an act of bankruptcy; and that commissions of bankrupt may be issued against such privileged traders, in like manner as against any other.¹⁰ A complaint against a peer cannot be entertained by the House of Commons.¹¹ In regard to servants, the privilege extends only to menial servants;¹² only to such as are servants *bonâ fide*, not therefore to a debtor who procures the situation to screen his person;¹³ and only to those who are servants merely, without any additional character, so that an attorney, though a menial servant, may be arrested.¹⁴ It is doubtful whether a gamekeeper is entitled to the privilege; and even though he should be, he will not be discharged without an affidavit of what the manor (of which he is the keeper) is, where it lies, that the lord is in possession, and himself the gamekeeper.¹⁵

In the case of
criminal prosecutions.

In criminal cases, the House has the right of receiving immediate information of the imprisonment or detention of any member, with the reason for which he is detained. A practice that is daily used upon the slightest military accusations, preparatory to a trial by a court martial;¹⁶ and which is recognised by the several temporary statutes for suspending the habeas corpus act,¹⁷ whereby it is pro-

¹ 4 Inst. 25; Cott. Abr. Pref. 8. b.

² L. 29 Nov. 1763; C. 24 Novem. 1763.

³ D'Ew. 203.

⁴ 7 T. R. 172. 448.

⁵ H. Parl. 16.

⁶ H. Parl. 30.

⁷ B. R. H. 37; 7 T. R. 172.

⁸ 12 March, 1592; Moor 340.

⁹ 5 T. R. 361.

¹⁰ 1 Com. s. 165, 166.

¹¹ Seld. 3 vol. 2 p. 1478.

¹² D'Ew. 315. 655.

¹³ D'Ew. 373.

¹⁴ Str. 1065.

¹⁵ 1 Wils. 278.

¹⁶ Com. Journ. 20 April, 1762.

¹⁷ Vide 17 G. 2. s. 6.

vided, that no member of either house shall be detained, till the matter of which he stands suspected, be first communicated to the House of which he is a member, and the consent of the said House obtained for his commitment or detaining. But yet the usage has uniformly been, ever since the revolution, that the communication has been subsequent to the arrest.¹

If in the face of this privilege, a peer, member, or servant is arrested, he may obtain his discharge either, 1. by writ of privilege in the nature of a supersedeas;² 2. or by moving the Court whence the process issues, that, upon filing common bail, he may be discharged.³ And where a member illegally detained under process of the court of King's Bench, is brought up by habeas corpus to be charged in execution in the Common Pleas, that court will remand him, that he may be discharged by the King's Bench.⁴ But the Speaker's letter for allowing the privilege, is of no avail.⁵ The House moreover has the power of punishing the offender by commitment; which, however, they will only exercise after the matter has been examined and reported upon by a committee.⁶

Discharge from arrest.

To assault by violence a member of either house, or his menial servants, is a high contempt of parliament, and there punished with the utmost severity.⁷ It has likewise peculiar penalties annexed to it in the courts of law by the statutes 5 H. 4. c. 6. and 11 H. 6. c. 11.⁸

Assaulting a Member.

SECTION V.

Of the Wages of Members.

MEMBERS of the House of Commons are entitled, knights of the shire to four shillings, and other members two shillings a day for their expenses *veniundo ad parliamentum*, *ibidem morando*, et *exinde redeundo*.⁹ To assess these wages for knights of the shire, the st. 23 H. 6.

Amount.

Assessment.

¹ 1 Com. 167.

² Latch. 150; Dy. 60. a. et and in marg. Seld. 3 vol. 2 p. 1524.

³ Fort. 342; B. R. H. 28; Str. 985.

⁴ Barnes, 199.

⁵ Latch. 48. 150; Dy. 60. in marg.

⁶ 13 Feb. 1700.

⁷ 1 Dec. 1699; D'Ew. 656. 658.

⁸ 1 Com. 165.

⁹ 1 Com. 165.

¹⁰ 4 Inst. 46.

c. 10. requires the sheriff at the next county court after the delivery of the writ, to make proclamation for the coroner's chief constables, bailiffs of hundreds, and all else that will come, to give their attendance at the next county court; under a penalty of forty shillings each; whereupon the sheriff or undersheriff, in full county, is to assess a certain sum on every hundred assessable, not exceeding in the whole the total sum due to the knights, and apportion it amongst the different villages; under a penalty of thirty pounds and treble damages for assessing in any other mode, or levying more than the assessment. By the same statute, the villages not theretofore assessed, shall continue exempt. Tenants therefore in ancient demesne, beneficed clerks in chancery, and tenants of the bishop of London are not contributory.¹ By stat. 12 R. 2. c. 12. lands hitherto contributory to the knights' wages, shall, when purchased by lords or ecclesiasticks, continue so still.

SECTION VI.

Of taking and keeping Places.

In the case of coming in during prayers.

DISPUTES have often arisen, where a member, having by himself taken a place before prayers, and left a book or glove in the place, and not being "in the place" at prayers, but coming in during prayers, and finding another member in his place, which of the two has the right to the place. It is said on the one hand, that the rule of the House is, that the member is to be at prayers, and that this cannot be known, unless he is in his place. To which it is answered, that it is not necessary the member should be there at "the beginning" of prayers; that having left a token in the place, it is his, till he has forfeited it by not being present in the House during any part of the prayers; and that no member is entitled to remove that token, or to take his place, till prayers are over, because a member, coming into the house after prayers are begun, ought to make as little disturbance as possible, and kneel down as close as he can to the door; and that it would be hard

¹ Cot. Ab.

to lose his place, because he comes in but a moment after prayers are begun. There has never been any determination of the House, upon this important question; but, continues Mr. Hatsell, I rather believe the latter to be the true doctrine, and to have been the opinion of the oldest members as to the practice.

It is the constant practice, that members lose their right to their seats by attending the Speaker to the House of Lords, when sent for by message from the king. The right to seats is also lost on a division (except by the tellers), which often makes it material, in questions otherwise indifferent, which side are to go out.¹

Loss of places by attending the Speaker.

It is commonly understood, that members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that parliament: and it is generally allowed them by the courtesy of the House.²

Place of Members who have received thanks.

On the opening of a parliament, the four members for the city of London claim a right (from custom) of sitting on the lower bench, on the right hand of the Speaker, on that day, and generally exercise it. At other times this is called the Treasury bench (and as appears from the ancient journals, used to be reserved for privy counsellors) and is now, by the favour of the House, left for the Lords of the Treasury, and other members in great offices, who are supposed by their avocations to be prevented from coming down to take places for themselves. But this too is matter of courtesy, and not of right. Mr. Pulteney, when in the height of opposition to Sir Robert Walpole, always sat on the Treasury bench. Of right no member can claim any other seat than what he has taken at prayers, or finds vacant afterwards, on his coming into the house.³

Miscellaneous matters.

SECTION VII.

Of compelling the Attendance of Members.

It is a common proceeding, when the House is going upon very important business, to send the serjeant with the mace into Westminster hall, and the places adjacent, to summon the members to attend the service of the

Summons by the Serjeant.

¹ 2 Hats. 94.

² 2 Hats. 94.

³ 2 Hats. 94, 95.

House. And this is almost universally done, when the House is to be called over. So by 10 G. 3. c. 16. s. 4. it is directed to be done previous to considering an election petition.¹

Call of the House.

When it is observed that members stay in the country and absent themselves from the business of the House, it is usual to order the House to be called over. And sometimes the Speaker is directed to write circular letters to the sheriffs, to summon the members to attend, copies of which are always entered in the journal. It is also not uncommon to order, that no member shall go out of town without leave of the House, and this to be obtained by motion in the house.²

Taking Members into custody.

There have been instances of late years of enforcing the calls of the House, by taking members, who do not attend, into the custody of the serjeant.³

SECTION VIII.

As to Members Speaking.

Cannot speak twice,

It is essential to the dispatch of business, that the rule and order of the House—that no member should speak twice to the same question, should be strictly adhered to. And it is the duty of the Speaker to maintain the observance of this rule, without waiting for the interposition of the House. It is to allow more ample and frequent discussion than this order will admit, that a committee is instituted, where every member may speak as often as he pleases. If a new motion is made, pending the former motion, as—to adjourn, or by way of amendment, or for the previous question, this entitles every member to speak again, to that question.⁴

Unless in a Committee,

Or on a new motion.

Where two rise together.

Where two members or more rise at the same time, it is usual to submit to the Speaker's decision as to who was up first. But any one who is dissatisfied may put it to the vote.⁵

¹ 2 Hats. 99. *supra*.

² 2 Hats. 99.

³ 2 Hats. 100, *in notis*.

⁴ 2 Hats. 105, 106.

⁵ 2 Hats. 106.

When a member speaks, he is to stand up in his place uncovered, and to address himself to the chair, and not to any particular member: if he is on the lower seat, he must have one foot within the floor. In the case of indisposition, a member may be permitted to speak sitting. Where a member speaks beside the question, it is the duty of the Speaker to interrupt him. Every member is entitled to be heard quietly.¹ A member may speak from the gallery; but he must have a seat, and not speak in the passage ways or from behind the clock.²

SECTION IX.

As to Putting Questions.

THE general rule is, that that question which is first moved and seconded is to be first put. It was the ancient practice for the Speaker to collect the sense of the House from the debate, and from thence to form a question on which to take the opinion of the House. But this has been long discontinued; and at present the usual and almost universal method is, for the member who moves a question to put it into writing, and deliver it to the Speaker, who, when it has been seconded, proposes it to the House, and then the House are said to be in possession of the question. And that question cannot, after it is proposed from the chair, be withdrawn but by leave of the House. The Speaker must read this to the House, as often as any member desires it for his information. But as it frequently happens that questions are moved, upon which the House do not wish to give any opinion, they avoid it, by moving either to adjourn,—or for the orders of the day—or for the previous question—or by making such amendments to the question as change the nature of it, and make it inadmissible even by those who proposed it.³

A motion for the House to adjourn, takes place of any motion before made or question proposed, although the same has been ever so long in debate; and is a method used by the House, to terminate (for that day at least) a

¹ 2 Hats. 107.

² 2 Hats. 108.

³ 2 Hats. 111—113.

matter which they do not think proper to determine by a question upon the matter itself.¹ But that the motion may take place of one already made and proposed, it must be simply to adjourn, not with the addition of a particular day.² And though where the motion is not made in the midst of any other proceeding of the House, and with a view to supersede a question already proposed, it may, like every other question, admit of an amendment by adding a particular day;³ yet, when so made, the amendment is not allowed, and the motion must be simply—that this House do now adjourn, whereupon, if carried in the affirmative, the House is adjourned to the next sitting day, unless they have come to a previous resolution, that at their rising they will adjourn to a particular day; in which case the House is adjourned to that day.⁴

The question of adjournment may be moved repeatedly upon the same day; but not without some intermediate question being proposed, after one motion to adjourn is disposed of, and before the next motion is made for adjourning.⁵

Motion for the orders of the day.

Another method of superseding a question already proposed to the House is by moving for the orders of the day to be read. This motion to entitle it to precedence, must be for the orders generally, and not for any particular order; and if this is carried, the orders must be read and proceeded on in the course in which they stand. But a motion to adjourn will even supersede this motion.⁶ The right of making a motion for the orders of the day to be read in the midst of another proceeding, does not hold where the House are actually proceeding upon one of the orders; it is only to supersede a question upon any other matter, not properly the business of the day.⁷

Or for the previous question.

The effect of the previous question, is only to put off the coming to the question at that time, and is in these words—that this question be now put. The same question may be therefore moved on another day. If the previous question is negatived, so as to put off the main question to another day, the same question though altered in words, if not essentially and substantially altered in matter, ought not to be again put that day. In a committee of the House there can be no previous question. If, there-

¹ 2 Hats. 113, in notis.

² 2 Hats. 113.

³ 2 Hats. 113, in notis.

⁴ 2 Hats. 113, 114.

⁵ 2 Hats. 109, in notis.

⁶ 2 Hats. 115.

⁷ 2 Hats. 121.

fore, it is wished to avoid a question, it is usual to move, that the chairman do leave the chair; which has the effect of a motion to adjourn, and takes place of every other motion.¹ It seems that after the previous question has been proposed from the chair, amendments cannot be proposed to be made to the main question.² The course is, either by proposing the amendments before the previous question is actually put,³ or by withdrawing the previous question.⁴

The other mode of avoiding a question is to alter it by amendments, till it bears a sense different from what was intended by the proposers.⁵

Of avoiding a question by amending it.

Though a question is complicated—that is, consists of two or more propositions, a member cannot as of right claim to have it divided, in order that he may give his opinion upon each proposition separately. But when a question is moved and seconded, and proposed from the chair, however complicated it may be, the only mode of separating it, is by moving amendments to it; which must be decided by the House upon a question. Unless indeed the House order that it shall be divided.⁶

Separation of a question into parts.

Although a question is moved and seconded, and proposed from the chair, yet if any matter of privilege arises either out of the question itself, or from any quarrel between members, or any other cause, this will supersede the consideration of the original question, and must be first disposed of. So if any question of order arises, this must necessarily be first decided, or if it is desired to have an act of parliament, or extract from the journal, or any paper before the House read, and the House acquiesce, this may be read. If, however, any person objects to the reading, the question must be stated and decided by the House.⁷

Miscellaneous matters.

¹ 2 Hats. 116.

² 2 Hats 123.

³ 2 Hats. 122.

⁴ 2 Hats. 124.

⁵ 2 Hats. 117.

⁶ 2 Hats. 119.

⁷ 2 Hats. 121.

SECTION X.

The same Bill or Question not to be twice offered.

General rule ;
and its interpretation.

It is a rule, that the same question which has been once proposed and rejected, should not be offered again in the course of the same session ; a rule that ought to be adhered to as strictly as possible, in order to avoid surprise and that unfair proceeding which might otherwise sometimes be made use of. This mode, however, is not to be so strictly and verbally observed, as to stop the proceedings of the House. It is rather to be kept in substance than in words ; and the good sense of the House must decide upon every question how far it comes within the meaning of the rule. It clearly does not extend to prevent the putting the same question in the different stages of a bill ; nor to prevent the discharging of orders that have been made, though made on great deliberation. But it excludes contradictory matters from being enacted in the same session.¹

With respect to bills it is clear, that wherever any clause or words are in a bill, though they should have even been inserted as an amendment by the House, yet upon any other subsequent stage of the bill, the sense of the House may be again taken upon these words, and they may be left out ; because every stage of a bill submits the whole and every part of it, to the opinion of the House ; and this being the known order of the House, there can be no surprise upon any person whatever. It seems that when a clause or particular words are moved to be added or inserted in one stage of a bill, and the House have given a negative to this motion, the same clause or words may be offered again upon any subsequent stage of the bill.²

¹ 2 Hats. 132, 133.

² 2 Hats. 135.

SECTION XI.

When the Speaker may take the Chair.

THE Speaker cannot take the chair till there be at least forty members in the house; a rule which holds both as to the number present when the Speaker takes the chair, and as to his quitting it again immediately, if it is after four o'clock. The distinction of not adjourning immediately, if it is before four o'clock, but of waiting, and if members come in so as to make up the number of forty present, proceeding with business, arises from four o'clock being the hour prescribed by the 30 Charles the Second and the 13 of William the Third, before which any member may take the oaths at the table; and therefore if the Speaker has taken the chair, and a member is introduced before that hour, he may be sworn, though forty members are not present; for a rule laid down by the House of Commons as a regulation to themselves, cannot supersede the directions of an act of parliament. But if, whilst any other business is depending, notice is taken that forty members are not present, and it is after four o'clock, the Speaker counts the House, and if forty members are not present, he by his own authority, immediately and without a question put, adjourns the House to the next sitting day, unless the House have previously resolved, that at their rising, they do adjourn to a particular day, when he adjourns the House to that day; and the resolution is frequently come to, when it is expected that, from the thinness of the House, they may break up for want of forty members.¹

Forty must be present.

Reason of non-adjournment till four o'clock.

And swearing in Members in the interim.

If Forty are not present, the Speaker, of his own authority, adjourns the House.

This rule is extended to committees of the whole House; so that it is equally necessary, if forty members are not present, for the chairman immediately to leave the chair, and for the Speaker to resume it. The distinction about the hour does not hold in committees, because the reason, upon which that distinction is founded, is not there equally applicable. When the Speaker resumes the chair, on the breaking up of a committee, the chairman can make no other report than informing the Speaker of the cause of their dissolution.²

The same rule holds with Committees of the whole House.

¹ 2 Hats. 175, 176.

² 2 Hats. 176.

Speaker may take the chair on the black rod's knocking at the door.

This rule being established by the House only as a restraint on their own conduct, does not extend to prevent the Speaker's taking the chair on the black rod's knocking at the door, whether with a message from the king, or commissioners appointed by the king, though fewer than forty members should be present. And it seems, that the Speaker on his return from the Lords, should resume the chair, notwithstanding forty members are not present.¹

Mode of Adjournment where forty members are not present.

When it happens that forty members do not assemble, the Speaker waits till four o'clock, and then adjourns the House, without any question, taking the chair for that purpose only; and in this case, he can only adjourn to the next sitting day.²

Mode of proceeding on a division, and not forty present.

When there is a division in the House, or a committee of the House, and it appears, upon the report of the numbers, that forty members are not present, and the House or the committee are upon this immediately adjourned, there can be no decision upon the question then under consideration, though upon the report of the numbers, the majority should be ten to one. In such cases, therefore, the matter under consideration continues exactly in the state in which it was before the division, and must be resumed at this period on some future day.³

Speaker or Chairman counts as one.

The Speaker or chairman of the committee is always considered as one of the forty.⁴

SECTION XII.

As to not admitting Strangers into the House.

Their exclusion is a motion of course.

WHEN a member in his place takes notice to the Speaker of strangers being in the house or gallery, it is the Speaker's duty immediately to order the serjeant to execute the orders of the House, and to clear the house of all except members; and this, without permitting any debate or question to be moved upon the execution of the order.⁵

¹ Hats. 171.

² 2 Hats. 177.

³ 2 Hats. 177, 178.

⁴ 2 Hats. 178.

⁵ 2 Hats. 180, 181.

SECTION XIII.

Of Leave to make a Motion.

THE order of the 25 of November, 1695, directs, that no new motion be made after one o'clock. The principle of which is to prevent a motion of importance being made after the House have proceeded on the particular business which has been appointed for that day, and where such motion may be a surprise on many members who have left the house. Formerly leave was necessary to a new motion, if it was after the time fixed by the order of the 25 Nov. without any consideration had of the orders of the day; but now the circumstance of having proceeded upon the orders of the day is what makes it necessary to have the leave of the House to introduce any new motion: if there remains any orders of the day not proceeded upon, it is not necessary to have leave to make a motion. It seems to be generally agreed that four o'clock is the hour for proceeding upon the orders of the day.¹

Leave is necessary only where the orders of the day have been proceeded on.

SECTION XIV.

On a Division of the House.

BEFORE the House proceed to a division, either in the House or a committee of the whole House; indeed before the question is put, upon which it is probable there may be a division, the Speaker or chairman should take care that all strangers are withdrawn.²

Exclusion of strangers.

As no member ought to be told in a division, who was not in the house when the question is put, so all members who were in the house must be told on one side or the other, and cannot be suffered to withdraw. It often happens, that members not wishing to vote upon particular questions, withdraw into Solomon's porch, or the

Telling.

¹ 2 Hats, 183, 184. et in notis.

² 2 Hats. 194.

Speaker's room ; but these being still considered as part of the house (since there is no avenue to them but through the house) if any members insist upon it, those members must return into the body of the house, and must be told. If they were not in the house or gallery, when the question was put, but were absent in Solomon's porch, or the room, and consequently did not hear the question put, they have a right to demand of the Speaker, 'what is the question,' and to stay in or go out even though the door should be then shut. But, if they were in the body of the house or in the gallery, when the question was put, and have from inattention, or any other circumstance, neglected to go forth till after the door is shut, it is not then in their option, as in the other case, *where* they will be told ; they must be told *in* the house, though by this they are made to vote contrary to their known and avowed inclination.¹

Speaker's
chamber,
And room.

What is commonly, in the proceedings of the House of Commons, called the Speaker's chamber, is the room behind the clock, and is not in the house. The Speaker's room, or little chamber, is that to which he retires from Solomon's porch, and is in the house.²

Telling.

Whilst the tellers are telling, members should be silent, that they may not be interrupted ; for if any one of the tellers thinks there is a mistake, or if they are not all agreed, they must begin and tell again. No member must remove from his place, when they have begun telling ; nor can any members be told but sitting in a seat, and not on the steps of any of the passages. When they have told the members in the house, and are all agreed, they should deliver in the number at the table to the clerk, that there may be afterwards no dispute. If any difficulty arises in point of order during the division, the Speaker must take upon himself to decide it peremptorily ; subject, however, to the future censure of the House, if that determination appears to be irregular or partial.³

Report.

Course where
only one mem-
ber sides on a
division.

It has sometimes happened, that a division has been demanded, and it has been found, that there is but one member on one side of the question, and consequently not enough to appoint two tellers. In this case, the division cannot go on, but the Speaker declares on the other side. If there are two tellers, the division must go on, and be reported, though on one side the return of the members should be none.⁴

¹ 2 Hats. 195, 196.

² 2 Hats. 196, 197.

³ 2 Hats. 198, 199.

⁴ 2 Hats. 199—201.

If any difficulty arises upon telling in the members, or the tellers should disagree upon their numbers, it does not appear how this can be decided but by another division.¹ Course on a dispute.

When the House has been told, and the tellers are agreed upon the numbers, the usual manner of reporting the numbers to the House is, for those tellers who have told on the part of the majority, to take the right hand in coming up to the table, and they all make three obeisances to the chair as they come from the bar; but if the numbers are equal, the tellers are mixed alternately.² Report.

SECTION XV.

Of Messages between Lords and Commons.

THE ancient and accustomed form of sending a message from the Commons to the Lords is by one member; who is, upon motion made and question put, named by the Speaker, and who is the bearer of the message. He must, however, be accompanied by others; since the rule and practice of the Lords is, to receive no message from the Commons unless eight members attend it. For this purpose, when the messenger takes his message from the table, the Speaker always calls aloud to the House, "Gentlemen, attend your messenger." In bills that have passed the Commons with a general concurrence, and in other messages in which the House wish to have an opportunity of showing their approbation of the measure, it is customary for a great number of members to follow their messenger, and attend him to the bar of the House of Lords. There is scarcely ever a difference of opinion on the question of who shall be the bearer of a message; as he is usually selected by the Speaker, either for having been the promoter of the bill, or for his known approbation of the subject matter of the message which he carries.³ From the Commons to the Lords.

When the Lords send any message to the Commons, it is always by two messengers. These, in matters of great moment, are two of the judges; at other times the From the Lords to the Commons.

¹ 2 Hats. 201.

² 2 Hats. 202.

³ 3 Hats. 27. 28.

messengers have been the master of the rolls, or masters in Chancery; and sometimes one master in Chancery, and the clerk of the parliaments. If the message requires an answer, the messengers ought to wait in the lobby to carry it back; which answer, as appears from the precedents, if the Commons immediately agree with the Lords, is delivered to them; but, if the Commons differ, or the subject matter of the message requires further consideration, they are called in again and told, that the House will send an answer by messengers of their own.¹

Course on receiving a message from the Lords.

When the serjeant informs the Speaker, and the Speaker has reported to the House that there is a message from the Lords, there must be a question for calling in the messengers; the admission of whom is so much a matter of course, that they have been received in the middle of a debate, the message reported by the Speaker, and an answer thereupon sent to the Lords, without any formal adjournment of the debate. So there being a message from the Lords, a committee of the whole House break up, for the purpose of enabling the House to receive it, and the House immediately again resolves itself into the said committee.²

SECTION XVI.

Of Messages from the Lords, desiring Members' Attendance.

The message must express the cause.

And compliance is voluntary.

THE Commons have been always extremely jealous of admitting any proceeding, which might seem to allow an authority in the Lords to command the attendance of any of their members for any purpose whatever. They have, therefore, always required that the Lords should, in their message, express the cause for which the attendance is desired; and even then the House proceed no farther than to give leave for the member to attend; and he is still at liberty to attend or not, as he shall think fit. The later practice has been, for the House not to send any answer to the message (except to say that they will send an answer by messengers of their own) till the

¹ 3 Hats. 29.

² 3 Hats. 30, 31.

member named in it is present in his place; and then on his hearing the message read, and consenting to comply with it, the House have given him permission to go; but still adding, in their answer to the Lords, "that he may attend, if he thinks fit." One object of the jealousy of the House of Commons, and which has made them particularly careful that the Lords should express in their message the cause for which the member is desired to attend, has been, that the Lords might not, on any pretence, call a member before them, to give an account either of the vote he had given in the House of Commons, or the motives that had inclined him to take a part in any bill, or other matter, then depending in parliament.¹

SECTION XVII.

Of Joint Committees of Lords and Commons.

OCCASIONALLY the Lords and Commons appoint a joint committee; in appointing which, it appears from all the instances, that both Houses have adhered to what was anciently the practice in naming members to manage a conference between the two Houses, namely, that the number of members of the Commons should be double the number of the Lords. The Lords also in these, as in other cases, appoint the time and place of meeting.²

The Commons double the Lords.

Time and place of meeting.

The advantage to be derived from such a joint committee, where the object of their appointment is to examine witnesses and to receive information, upon which, both Houses are afterwards to ground their proceedings is, that the evidence which is to be the foundation of their future measures, will by this means be precisely the same; not varied by different questions proposed with different views, which might produce different answers, and lead to such information as might induce one House that had received it, to propose or to adopt different measures from what might appear proper to the other House, which, in the course of a separate examination, had received not such information. The same questions and answers will form the substance of the report to be made to each House; and in their further proceedings, both

Object of joint Committee.

¹ 3 Hats 19, 20.

² 3 Hats. 42.

Houses will be sure, that the facts and evidence from which they draw their conclusions, as well as the colour and manner of delivering that evidence, will be the same. If, indeed, the joint committee had a power to give any opinion, or to make any other report than of the minutes of the examination of the witnesses, an objection would very properly arise on the part of the Lords, that the number of the commons being double the number of the lords, that circumstance would take from their lordships all power of deliberation or of conclusion, in matters where there was a difference of opinion; or which is the same, would render such conclusions of no effect. The minute-books being lost or mislaid, no traces can be found, except in the journals of both Houses, of the manner in which these joint committees proceed to execute their powers. It appears from Mr. Waller's report on the 12th of January, 1661, that the Commons did not consider themselves as merely attending a conference with the Lords, where the rules which have been uniformly observed at conferences between the two Houses, would have prevented them from sitting or putting on their hats; but that at this committee, they were in every respect upon an equality with the Lords with whom they were joined. When Lord Clarendon made his report to the Lords, on the 7th of January, 1661, he said, "that the committee finding some imaginary jealousies abroad of the end and intent of this committee's meeting, the said committee have made no resolutions or opinions, but have thought fit to leave the business to the wisdom of both Houses of Parliament."¹

Another circumstance, which has by some persons been thought an advantage attending a joint committee of this sort is, that the examination being to be taken before a committee of the Lords, and it having been usual, and the practice of the Lords, that witnesses to be examined at their committees should be previously sworn at their lordships' bar, the evidence would in this instance also be given upon oath; and that the persons to be examined before this joint committee would as was done on the 24th and 25th of April, 1695, be sworn at the bar of the House of Lords, by which means their evidence receives the sanction and authority of an oath, which could not be administered by the House of Commons: when it was proposed in December 1788, to examine the physicians

¹ 3 Hats. 42, 43.

who had attended his Majesty, in order to lay before both Houses the information of the state of the king's health, and the capacity he was under to attend to public business, and to execute the functions of his station, it was at first intended, for some of the reasons mentioned before, that this examination should be taken before a joint committee of both Houses; and the forms of proceeding to the appointment of that committee in the House of Commons, and the motions for a conference with the Lords, and the subsequent proceedings, were settled and prepared in order to be moved in the Commons; but when this mode was previously suggested to those members of the administration who were members of the House of Lords, they objected to it, and were of opinion, that the Lords in general would object to appointing a joint committee, where, from the practice adopted in all the former instances, the number of commoners must be double the number of the lords—from which circumstance it might follow, that if there should be a difference of opinion, as to the propriety of any question to be put to the physicians, which in a matter of this delicate nature, might very probably occur, the voices of the lords, being so outnumbered, would be rendered of no effect. The mode adopted, of each House appointing a separate committee, and giving powers to these committees to communicate with each other from time to time, obviated this objection, and yet preserved all the advantages that might have arisen from a joint committee.¹

SECTION XVIII.

Of particular Lords being attended by a Committee of the House of Commons.

THE old practice of appointing committees to attend certain lords, and to receive and report to the House of Commons such information as they could give upon particular subjects then under inquiry, seems to be a mode of proceeding, adopted and substituted in lieu of desiring the personal attendance of such lords to be examined to those points. But from the nature of the proceeding, it

Reason of the Practice.

¹ 3 Hata. 43—45.

must have been very defective to answer its particular purpose. In a personal examination many questions occur, which arise out of the evidence, and could not be thought of on first sending the message. And therefore the House of Commons have very properly, in later instances, departed from this practice, and have desired the attendance of the lord in person to receive his *viva voce* evidence.¹

Now, however,
obsolete.

SECTION XIX.

Of Proceedings between Lords and Commons, where the Rights and Privileges of either House are concerned.

Each House is
independent of
the other.

THE leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other; and that they shall be in every respect, totally independent one of the other. Hence it is, that neither House can claim, much less exercise, any authority over a member of the other; but if there is any ground of complaint against an act of the House itself, against any individual member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them.²

Bills (with certain exceptions)
may be originated in either
House.

Each House has a right to originate and pass such bills as to them may seem proper; except that the Lords have claimed the exclusive right, that bills for restitution of honours, or in blood, should commence with them; and the House of Commons have on their part asserted the exclusive exercise of the right—"that bills of supply, imposing burdens upon the people, should be the grant of the Commons; and that the Lords should have no other voice than, as one branch of the legislature, by their assent to give the authority of a law to the levying of those aids and taxes which the Commons shall think wise and fitting to impose." Other bills, of what kind soever, whether

¹ 3 Hats. 86.

² 3 Hats. 67.

relating to the parliament itself, or to either House separately, may have their commencement indifferently in either House. At the same time, it seems but reasonable, that bills which have for their object the regulation of such matters as fall more immediately under the cognizance of either House of Parliament, should begin in that House which must, from several circumstances, be more competent to frame the provisions of the bill in such a manner as to be best able to answer the purposes intended by it. There is one bill which begins neither with the Lords nor Commons, but with the Crown; and that is, "a bill for a general pardon." This is first signed by the Crown, and transmitted to both houses, in each of which it has only one reading. It however afterwards again receives the royal assent, in the same form with every other public bill, and the answer is, "le roi le veut."¹

When a bill has passed one House and been sent to the other, the provisions of which have been grounded, not upon general notoriety, but upon special facts that are necessary to be proved by evidence, it is usual for the House to which the bill is sent, to ask, either by message or at a conference, the grounds and evidence upon which the bill has passed; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated. But further than this, it is irregular in either House to proceed. To ask, why the House, where the bill took its rise, passed it in such or such a manner; or to acquaint the House, to which it is sent, that it had passed unanimously; are objectionable proceedings. It has not, however, been unusual for either House to remind the other of a bill, which, from its importance, has appeared to deserve greater dispatch than the House of Parliament, to which it is sent, seemed inclined to give it.²

Neither House of Parliament can take upon themselves to redress any injury, or punish any breach of privilege offered to them by any member of the other House. But in such cases, the usual mode of proceeding is, to examine into the fact, and then to lay a state of that evidence before the House of which the person complained of is a member.³

Where the cause of complaint is, words spoken by a member of either House of Parliament, reflecting upon the other House or any of its members; it appears from

The reasons demanded by one House upon which the other has passed a Bill.

A member of one is not punishable by the other.

Course where a member of one libels the other House or its Members.

¹ 3 Hats. 67—70.

² 3 Hats. 70, 71.

³ 3 Hats. 71.

several instances how extremely difficult it is to obtain any redress. The impossibility of ascertaining exactly the expressions objected to, and the different meanings which may be affixed to the same set of words, according to the tone and manner of the persons speaking, have, in the instances referred to, rendered all these applications for redress without effect. But there is still something further, which makes the proceedings upon these occasions very delicate. If disorderly expressions are used in either House of Parliament, and are not taken notice of at the time, and objected to by the House in which they are delivered, the practice of the House of Commons is, that they cannot afterwards be called in question, even by the House itself; how much more difficult then is it for the other House, who can have no information of these words but from report, so to ascertain the form of the expressions, and the meaning and intention of them, as to be able to fix upon them the charge of disorder and irregularity; and thereby to entitle themselves to claim redress from the House in which they were spoken, or to desire such punishment may be inflicted, as the party offending may be thought to deserve.¹

Interference
of one House
where a person
is in custody of
the other.

Where persons are already in custody of the black rod, or of the serjeant attending the House of Commons, or confined by order of either House of Parliament, it is not consistent with that independent equality, which ought to subsist between the two Houses, for the other House to interfere. But if they have occasion for the presence of the person so committed, they usually signify their desire to the House which committed him, and ask their leave that he may be brought up to them, in order to be examined.²

SECTION XX.

Mode of Searching the Lords' Journals.

Appointment
of a Com-
mittee.

It has been the uniform practice of the Commons, if they have occasion to know formally what the Lords have done with respect to any bill or other measure de-

¹ 3 Hats. 73.

² 3 Hats. 74, 75.

pending, to appoint a committee to search the Lords' journals on this matter, and to report the proceedings to the House. Nor to entitle the Commons to this right, is it necessary that the subject matter of the search should have originated in the House of Commons. It does not appear that the Lords have ever adopted a similar proceeding with respect to the journals of the House of Commons.¹

Search by the
Lords of the
Commons'
Journals.

¹ 3 Hats. 32, 33.

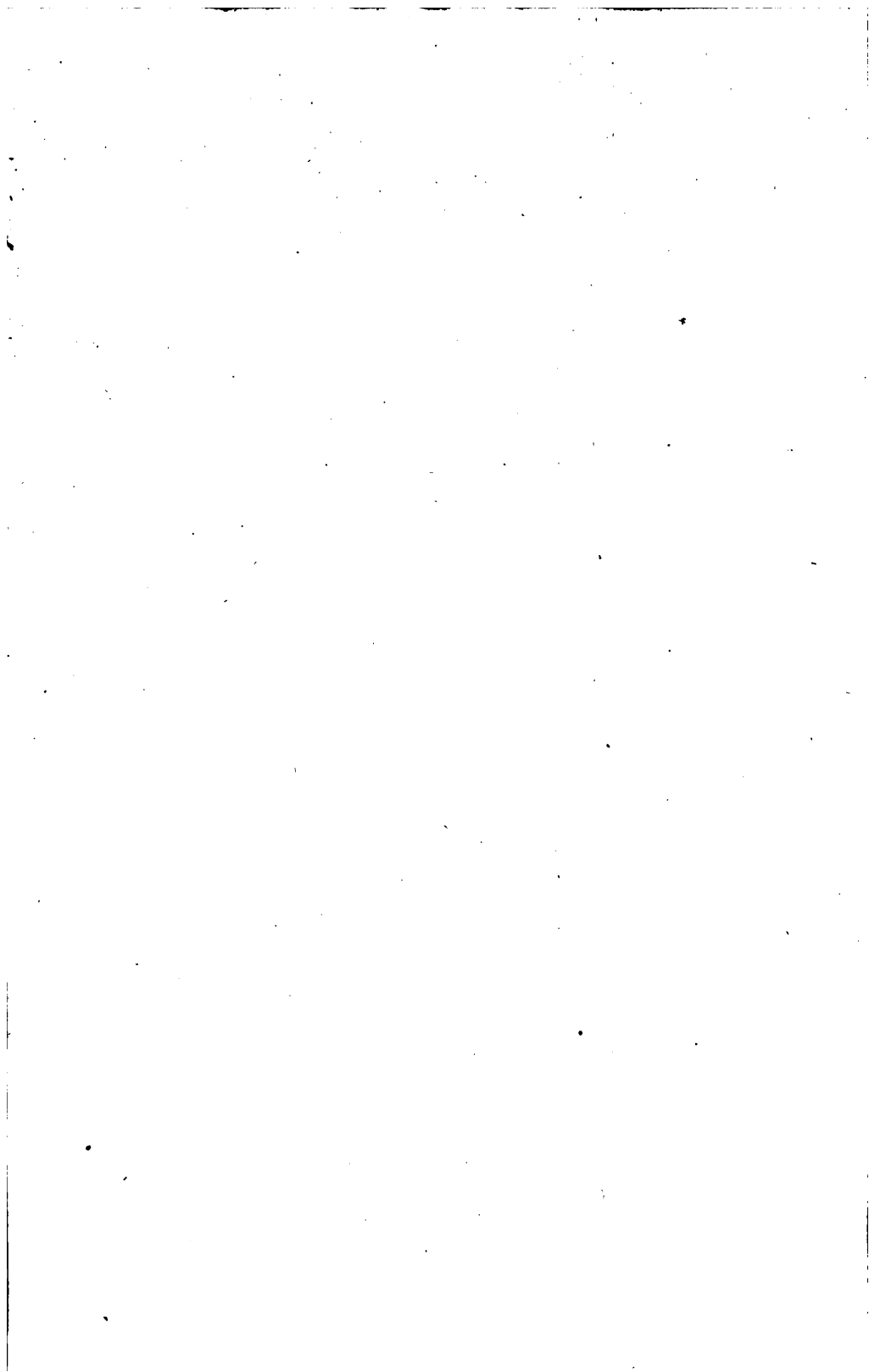
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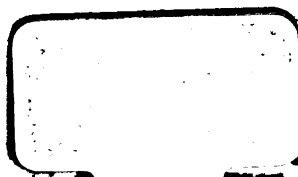
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THE END.







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